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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 303.

SIMEON I. GRIN, APPELLANT,

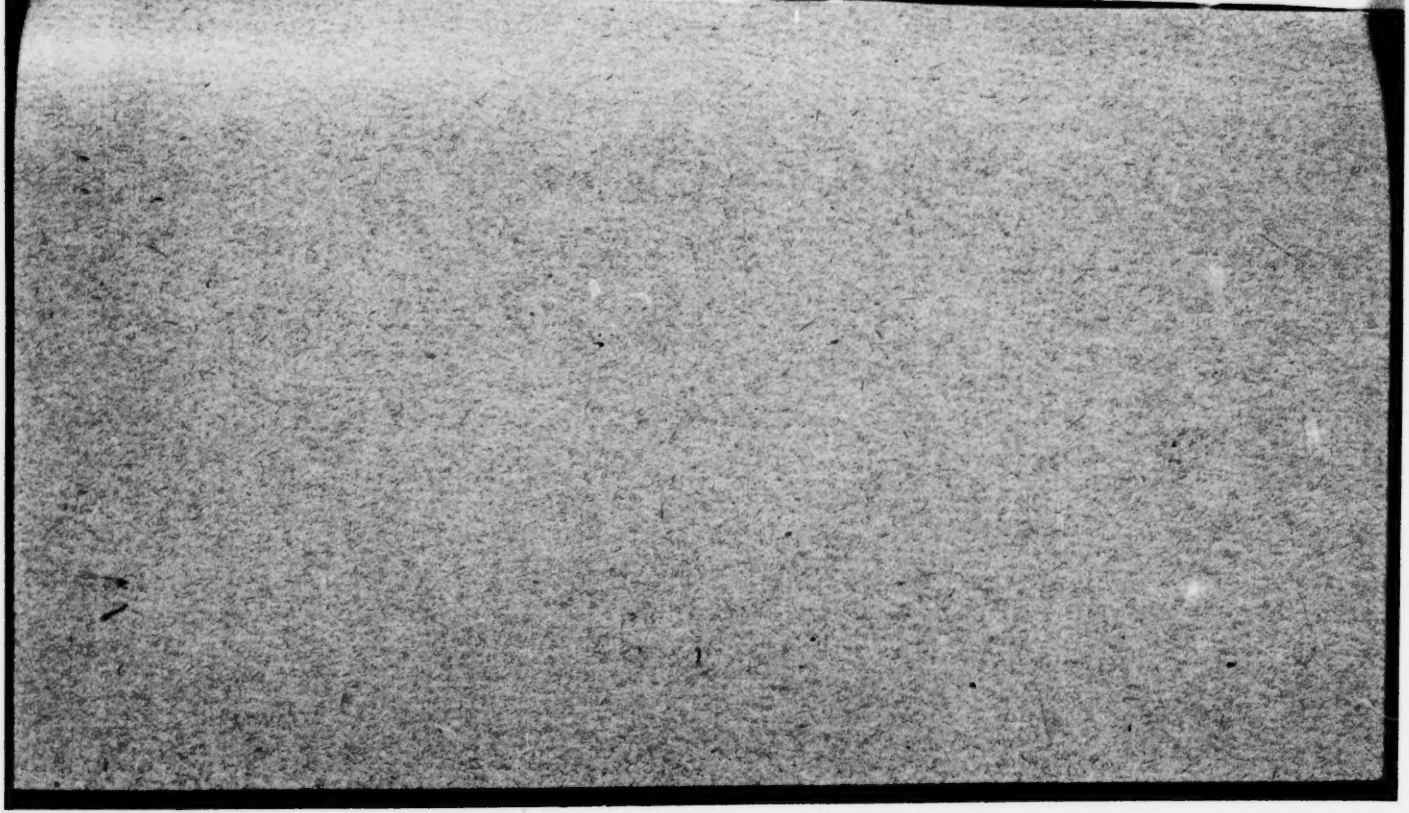
vs.

JOHN H. SHINE, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED APRIL 14, 1902.

(18,495.)



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1 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Petition of SIMEON I. GRIN for a Writ of *Habeas Corpus* and Certiorari.

Petition.

To the honorable the circuit court of the United States of America, ninth judicial circuit, northern district of California:

The petition and complaint of Simeon I. Grin respectfully shows to your honorable court:

1. That he is now unlawfully imprisoned and restrained of his liberty by John H. Shine Esq., United States marshal for the northern district of California, and at the county jail of the city and county of San Francisco, in the said district.

2. That your petitioner is thus imprisoned and held in custody under color of the authority of the Constitution and laws of the United States, relating to the return of fugitives from justice to foreign countries with which the United States has concluded treaties of extradition.

3. That the said John H. Shine Esq., as said United States marshal, claims to hold in said custody and to imprison your petitioner to await the action of the Secretary of State of the United States, under and by virtue of a certain warrant of commitment issued by E. H. Heacock Esq., United States commissioner for said dis-

2 trict, of which warrant the following is a true copy viz:

"*Commitment.*

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco.

In extradition before the Honorable E. H. Heacock, United States commissioner for the northern district of California, at San Francisco, and commissioner duly authorized to act under section 5270 of the Revised Statutes of the United States.

In the Matter of the Application for the Extradition of SIMEON IVANOW GRIN, alias VALENTINE SEMASHKA, under the Treaty between the United States of America and His Majesty the Emperor of All the Russias, Concluded on March 28, A. D. 1887.

The President of the United States of America to the marshal of the United States for the northern district of California, Greeting:

Whereas complaint has been made upon oath of His Imperial Russian Majesty, Consul Paul Kosakevitch, stationed and residing in the city and county of San Francisco, in the State and district aforesaid, before the Honorable John J. De Haven, district judge of

the United States for the northern district of California, That on, to wit, the 6th day of March, 1901, Simeon Ivanow Grin, a Russian subject, was in the employment of the representatives of the firm of E. L. Zerfo & Company doing business in Rostov, on the Don, in the Empire of Russia, and that said Simeon Ivanow Grin was on said 6th day of March, 1901, residing in said city of Rostov.

That on said 6th day of March, 1901, Stephen Yegorovitch Zeefo was the representative in said city of Rostov on the Don, of
3 said firm of E. L. Zeefo & Company, and that with him associated in business was Andrew Yegorovitch Zeefo, his brother.

That on said 6th day of March, 1901, said Simeon Ivanow Grin was in the employment of said Simeon Yegorovitch Zeefo as the representative of said firm. That on said day said Simeon Ivanow Grin was employed by said representative of said firm as a clerk. That on said 6th day of March, 1901, in said city of Rostov on the Don, Empire of Russia, and while said Simeon Ivanow Grin was so as aforesaid employed as such clerk, the sum of twenty-five thousand (25,000) roubles, in Russian money, was entrusted and delivered to Simeon Ivanow Grin, in said city of Rostov on the Don, by said Stephen Yegorovitch Zeefo, as such representative of said firm, and for use of said Zeefo as the representative of said firm. That said money was the property of said Stephen Yegorovitch Zeefo, as the representative of said firm, and was entrusted to and received by said Simeon Ivanow Grin, in his capacity as clerk aforesaid.

That on, to wit, said 6th day of March, 1901, said Simeon Ivanow Grin received said money as aforesaid, and, to wit, on said day wrongfully, unlawfully and feloniously appropriated said money, and the whole thereof, and converted the same to his own use, and embezzled the same, and fled, departed and absconded from said city of Rostov on the Don, in said Empire of Russia, with said money, to said city and county of San Francisco, State of California, and has assumed and goes by the name of Valentine Semaska, and not by his said true name, and is now within said city and county and district above named.

4 That criminal proceedings have been instituted and begun in said city of Rostov on the Don, Empire of Russia, against said Simeon Ivanow Grin for the said embezzlement, and said Simeon Ivanow Grin has been indicted in said Empire of Russia for said embezzlement of said money, and is a fugitive from the justice of Russia.

That said sum of twenty-five thousand (25,000) roubles is the equivalent in lawful money of the United States of America of the sum of twelve thousand five hundred (12,500) dollars.

That a mandate has been issued from the Department of State of the Government of the United States of America, directing that the honorable judge of this court cause the necessary proceedings to be had in pursuance of the laws of the United States of America, in order that the evidence of the criminality of the said Simeon Ivanow Grin, alias Valentine Semaska, may be heard and considered, and if deemed sufficient to sustain the said charge, that the same may be

certified, together with a copy of all the proceedings, to the Secretary of State, that a warrant may issue for his surrender pursuant to the treaty stipulations between the United States of America and said Empire of Russia.'

And the said accused, Simeon Ivanow Grin, alias Valentine Semaska, having been arrested upon the warrant issued by the Honorable J. J. De Haven, as aforesaid, and having been brought before me, to the end that the evidence of his criminality might be heard and considered, and it appearing that the crime with which the said Simeon Ivanow Grin, alias Valentine Semaska, is charged is embraced within the treaty of extradition aforesaid between
5 the United States of America and His Majesty the Emperor of all the Russias aforesaid, and that the said Simeon Ivanow Grin, alias Valentine Semaska, having been examined by me, the undersigned commissioner, concerning the charge alleged against him in said complaint, and I having found that the evidence is sufficient in law to justify the commitment of the said Simeon Ivanow Grin, alias Valentine Semaska, upon said charge,

These are therefore to command you to receive the said Simeon Ivanow Grin, alias Valentine Semaska, in your custody, to await the order of the President of the United States of America, and you will commit him to the proper jail, there to remain until such surrender shall be made.

In witness whereof, I have hereunto set my hand, at my office in the district aforesaid, this 19th day of November, 1901.

(Signed) E. H. HEACOCK,

U. S. Commissioner for the Northern District of California, at San Francisco, and Commissioner Duly Authorized to Act under Section 5270 of the Revised Statutes of the United States."

That the following is a true copy of the complaint upon which the said warrant of commitment is based, viz:

"To the hon. judge of the United States district court for the northern district of California:

In the Matter of the Extradition of SIMEON IVANOW GRIN, alias VALENTINE SEMASKA.

UNITED STATES OF AMERICA, }
Northern District of California. }

Paul Kosakevitch, being first duly sworn deposes and says
6 that he is His Imperial Russian Majesty's consul stationed and residing at the city and county of San Francisco, United States of America.

That on, to wit, the 6th day of March 1901, Simeon Ivanow Grin, a Russian subject, was in the employment of the representatives of the firm of E. L. Zeefo & Company, doing business in Rostov, on the Don, in the Empire of Russia, and that said Simeon Ivanow Grin was on said 6th day of March, 1901, residing in said city of Rostov.

That on said 6th day of March 1901, Stephen Yegorovitch Zeefo was the representative in said city of Rostov, on the Don, of said firm of E. L. Zeefo & Company, and that with him associated in business was Andrew Yegorovitch Zeefo as the representative of said firm. That on said day said Simeon Ivanow Grin was employed by said representatives of said firm as a clerk. That on said 7th day of March 1901, in said city of Rostov on the Don, Empire of Russia, and while said Simeon Ivanow Grin was so as aforesaid employed as such clerk, the sum of twenty-five thousand (25,000) roubles, in Russian money, was entrusted and delivered to said Simeon Ivanow Grin, in said city of Rostov on the Don, by said Stephen Yegorovitch Zeefo, as such representative of said firm, and for the use of said Zeefo as the representative of said firm. That said money was the property of said Stephen Yegorovitch Zeefo, as the representative of said firm, and was entrusted to and received by said Simeon Ivanow Grin, in his capacity as clerk as aforesaid.

That on, to wit, said 6th day of March, 1901, said Simeon Ivanow Grin received said money as aforesaid, and, to wit: on said
7 day wrongfully, unlawfully and feloniously appropriated said money and the whole thereof, and converted the same to his own use, and embezzled the same, and fled, departed and absconded from said city of Rostov on the Don, in said Empire of Russia, with said money, to said city and county of San Francisco, State of California, and has assumed and goes by the name of Valentine Semaska, and not by his said true name, and is now *with* said city and county and district above named.

That criminal proceedings have been instituted and begun in said city of Rostov on the Don, Empire of Russia, against Simeon Ivanow Grin, for the said embezzlement, and said Simeon Ivanow Grin, has been indicted in said Empire of Russia for said embezzlement of said money, and is a fugitive from the justice of Russia.

That said sum of twenty-five thousand (25,000) roubles is the equivalent in lawful money of the United States of America, to the sum of twelve thousand five hundred (12,500) dollars.

That a mandate has been issued from the Department of State of the Government of the United States of America, directing that the honorable judge of this court cause the necessary proceedings to be had in pursuance of the laws of the United States of America, in order that the evidence of the criminality of the said Simeon Ivanow Grin, alias Valentine Semaska, may be heard and considered, and if deemed sufficient to sustain the said charge that the same may be certified together with a copy of all the proceedings, to the Secretary of State; that a warrant may issue for his surrender pursuant to the treaty stipulations between the United States of America and said Empire of Russia.

8 Wherefore, deponent prays that the necessary proceedings may be had in order that the criminality of the said Simeon Ivanow Grin, alias Valentine Semaska, may be heard and considered, as so directed, and that he be immediately taken into custody and brought before this court and detained in custody until a warrant issue for his surrender to the authorities of said Empire of

Russia, pursuant to the existing treaty of stipulations between the United States of America and the Empire of Russia.

(Signed) PAUL KOSAKEVITCH,
Russian Imperial Consul.

Subscribed and sworn to before me this 16th day of October A. D. 1901.

GEORGE E. MORSE,
[SEAL.] *United States Commissioner for the Northern District of California in San Francisco.*"

That George E. Morse the United States commissioner whose name is subscribed to the said complaint and by whom the complainant was sworn, as by said complaint appears, was not at the time of receiving said complaint, nor at the time of taking said oath thereto of the said complainant, nor at the time of filing said complaint, nor at the time of signing his name thereto as aforesaid, a United States commissioner duly or specially or at all authorized by any court of the United States nor by any judge of a court of general jurisdiction of any State, to receive or take said complaint or to take the oath of the complainant thereto.

4. That upon said complaint and not otherwise, the hon. judge of the district court of the United States for the northern dis-
9 trict of California, issued and signed a warrant of arrest for the apprehension of your petitioner and in said warrant of arrest directed and ordered that when arrested, your petitioner be brought before E. H. Heacock, Esq. United States commissioner for examination and further proceedings. That at the time of the signing and issuing of said warrant of arrest, and at the time of the said making and filing of the said complaint, the said E. H. Heacock Esq., was not authorized by any of the courts of the United States nor by any judge of a court of record of general jurisdiction of any State, to hear or take cognizance of said or any complaint, in extradition proceedings or to issue a warrant for the apprehension or arrest of any person so charged, or to hear or consider or pass upon evidence of criminality of any person so charged.

That the evidence before said E. H. Heacock Esq., United States commissioner as aforesaid, and being the same evidence referred to in the said warrant of committment, totally fails to show and in no respect tends to show that your petitioner committed the crime of embezzlement in the Empire of Russia or elsewhere.

That a transcript of the said evidence and a copy of the papers and records upon which said extradition is sought by the Russian government are hereto annexed and are hereby made a part of this petition. That said papers and record are not authenticated so as to entitle them to be received as evidence of the criminality of petitioner, by the tribunals of Russia; nor are the same authenticated according to the laws of Russia. That your petitioner has not been indicted in Russia upon said or any charge of embezzlement.

That according to the laws of the State of California, the
10 evidence attached hereto would not justify his apprehension or committment for trial upon a charge of embezzlement, if

the matters attested and proved by said evidence occurred in the State of California. That the demand or requisition for the surrender of your petitioner to the Russian government is not made by the diplomatic agent of said government nor by a superior consular officer. That the application of Russia for the extradition of your petitioner is not and never has been accompanied by an authenticated copy of the warrant of arrest or of some other equivalent judicial document issued by a judge or a magistrate duly authorized to do so. That the demand for your petitioner's extradition is not accompanied by a copy of the judgment of any court whatever. That there is not in the record any signature of the judge of any court in Russia authenticated by the proper executive officer of Russia, setting forth the acts with which your petitioner is charged.

Your petitioner further avers that the mandate issued by the Secretary of State of the United States and mentioned in the said commitment of the said commissioner was issued and is directed to the honorable judge of the district court of the United States for the northern district of California, and that the said commissioner never acquired or possessed any or the least authority to hear or consider or determine the said proceedings in extradition nor to make, order, or issue or sign the said commitment.

Your petitioner further represents to your honorable court that the matters set forth in said complaint sworn to before United States Commissioner Geo. E. Morse, Esq., do not constitute the crime of embezzlement, as that offense is defined by the laws of the
11 State of California. Your petitioner further states that at the time said complaint was sworn to and at the time of the issuance of the warrant of arrest thereon and at the time of the service and execution of the said warrant of arrest, your petitioner was then at all said times a resident and inhabitant of and personally within the southern district of California, and was not at any of said times in the northern district of California.

That for the reasons hereinbefore and in this petition specified, the said imprisonment of your petitioner is unlawful and in violation of the Constitution and laws of the United States and in particular, the fifth amendment of the Constitution of the United States, and sections 5270 and 5271 of the Revised Statutes of the United States.

Wherefore your petitioner prays that a writ of *habeas corpus* issue out of your honorable court, to the said John H. Shine, Esq., United States marshal aforesaid, requiring him to produce before you, the body of your petitioner, at some convenient time to be therein designated, there to abide what shall be awarded by your honorable court, in the premises, and that your petitioner be discharged from said imprisonment.

Your petitioner also prays that a writ of certiorari likewise issue out of your honorable court to the said E. H. Heacock Esq., United States commissioner, requiring him to certify to you with all convenient speed, the record, proceedings and evidence and his author-

ity by virtue of which he assumed to issue and did issue the said warrant of commitment.

SIMEON I. GRIN, *Petitioner.*

GEORGE D. COLLINS,
Attorney for Petitioner.

12 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

Simeon I. Grin being duly sworn deposes and says that he is the petitioner herein; that he has heard read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge and to the best of his information and belief.

SIMEON I. GRIN.

Subscribed and sworn to before me this 20th day of November A. D. 1901.

[SEAL.]

MARK LANE,
Notary Public in and for the City and County of San Francisco, State of California.

13 Copy.

(Translation.)

8449.

Order.

Year 1901, the 10th day of August, city of Rostov on the Don.—The acting examining magistrate of the Taganrog circuit court of the 4th district of the city of Rostov on the Don, having investigated the preliminary examination in regard to the embezzlement by the Cossack Simeon Grin of 25,000 roubles, belonging to the representatives of an export corn-trading concern Zeefo in the city of Rostov on the Don, under the firm of "E. L. Zeefo & Co." finds: (1) that the Cossack of the province of Poltava, of the county of Zenkov, of the bailiwick of Oposhnia, of the village of Popovka, Simeon Ivanov Grin, who resided from the end of June of this year in the city of San Francisco at the Grand hotel with a passport issued in the name of a nobleman Valentine Semashko, is arraigned in capacity of the person accused of said crime, pursuant to part 1, article 1681 of the Penal Code; (2) that by the party injured, Stephen Yegorovitch Zeefo, there has been brought a civil suit against the said accused S. Grin for the sum of 25,000 roubles; (3) that in proof of his rights as the injured party, S. E. Zeefo has presented to the examining magistrate a complete power of attorney given to the plaintiff S. E. Zeefo, as to the chief representative of the above-mentioned corn-trading concern, by his father E. L. Zeefo, who resides constantly in the city of London, said power of attorney being attested by a notary of the city of London, Alexander Rodgeway, on November 19th, 1900, and the signature of the latter—by the Imperial Russian con-

sul general on November 20, 1900; (4) that in view of the
14 aforesaid and likewise in view of the circumstances expounded in the order in regard to the arraignment of S. Grin in the capacity of accused, the right to participate in the case, the injured party S. E. Zeefo in capacity of the person bringing the civil suit, is indubitable, are therefore ordered to admit Stephen Yegorovitch Zeefo, as plaintiff in the civil suit in regard to the Cossack Simeon, Ivanov Grin, who is accused pursuant to part 1, article 1681 of the Penal Code.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

15 (Copy.)

(Translation.)

Order.

Year 1901, the 10th day of August, city of Rostov on the Don.—The acting examining magistrate of the Taganrog circuit court of the 4th district of the city of Rostov on the Don, having investigated the preliminary examination in regard to the Cossack of the province of Poltava, of the county of Zenkov, of the bailiwick of Oposhnia, of the village of Popovka, Simeon, Ivanov Grin, who is arraigned in capacity of accused, pursuant to part 1, article 1681 of the Penal Code, for the embezzlement of 25,000 roubles, belonging to the representatives of the corn-trading concern Zeefo in the city of Rostov on the Don, finds: (1) that the injured party Stephen Yegorovitch Zeefo, who brought a civil suit in regard to the accused Simeon Grin, and who was admitted in the case in capacity of person bringing the civil suit, has petitioned that there be taken from the accused S. Grin money and other property that will be found in his possession at the time of arrest, and (2) that this petition must be granted, as it has been proved, that S. Grin stole on the 6th of March of this year 25,000 roubles belonging to Zeefo, and that with this money the accused absconded from Rostov on the Don to America, having abandoned his own small property, namely, 40 roubles in a savings bank and clothes, forming in total a sum up to 150 roubles; however, S. Grin did not possess any other property, as he earned in all only 45 roubles per month, and spent all as appears from his account books. Taking into consideration that the money, which may be found in the possession of S. Grin at the time of his arrest, is the property of Zeefo, and is to be considered
16 as *corpus delicti*, and that all the effects that will be found in his possession, with the exception of a suit of clothes, were acquired with the money stolen from Zeefo, which is partly evident from the letters written by S. Grin himself and sent by the latter to his father from the city of San Francisco, ordered: to deem that

the property, if such shall be found upon the arrest of S. Grin, is to be taken away from him and transferred to the city of Rostov on the Don, together with the accused.

Acting examining magistrate of the 4th district of the city of Rostov on the Don,

OKLADNIKH.

(Copy) conforming with original:

Acting examining magistrate of the 4th district of the city of Rostov on the Don,

OKLADNYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

17 (Translation.)

8449.

Order.

Year 1901, the 23rd day of July, Rostov on the Don.—The acting examining magistrate of the 4th district of the city of Rostov on the Don, having investigated the preliminary examination in regard to the appropriation by the Cossack of the province of Poltava, Simeon Grin, of 25,000 roubles, belonging to the Broth. Zeefo, finds as follows:

The representatives of an old-established export corn-trading concern in Rostov on the Don, Stephen, son of Egor, Zeefo, and Andrew Yogorovitch Zeefo, British subjects, lodged a complaint against the Cossack of the province of Poltava, Simeon Ivanov Grin, in their employ as hired clerk, for the appropriation and embezzlement of 25,000 roubles, which were received by him on March 6th of this year by check payable to bearer, with which money he absconded on that same day from the city of Rostov on the Don together with his brother Gregory, 14 years of age, not having delivered the money according to destination to the administration of the Vladikavkaz railroad in Rostov on the Don.

The following was established in the preliminary examination: On the 6th of March of this year D. Apalira, employed as book-keeper by the said trading concern, received an order from his master Stephen Zeefo to make a transfer of 25,000 roubles to Sarsenti, the representative of the same firm at the city of Novorossiesk, for which purpose it was necessary to obtain the money by check of the St. Petersburg private commercial bank from the "Rostov on
18 the Don" branch of the State bank and to carry said money to the administration of the Vladikavkaz railroad in order that there would be transferred to the city of Novorossiesk. D. Apalira immediately called up by telephone from the riverside office of Zeefo, the employee Simeon Grin, who lived there, not notifying him of his intentions, went with him to the St. Petersburg private commercial bank, presented there commercial letters of Stephen Zeefo in regard to the payment of 25,000 roubles and then made arrangements that Simeon Grin would receive the check No. 544,714, would

receive money on the strength of it, and would carry it to the administration of the Vladikavkaz railroad. About 1 p. m. on the 6th of March, Simeon Grin acknowledged by signature the receipt of a check for the sum of 25,000 roubles and immediately after that received from the "Rostov on the Don" branch of the State bank per said check, acknowledging the receipt by signature, 25,000 roubles, same having been ascertained on the 9th of March of this year by examination of the text of the receipt by examination of the handwriting on same by experts in the matter of discerning the authenticity of signatures and by the presentation of a photograph of Simeon Grin to the employees of the State bank, who were present when S. Grin received the said money. Simeon Grin was in a hurry and asked that the money would be given to him in bank notes of five hundred roubles and one hundred roubles so that he received said sum by package of 170 bank notes. Further, Simeon Grin appeared for the shortest *of* space of time at his lodging, took along with him his brother Gregory, 14 years of age, who lived with him and was under his care, locked his lodging, and then both brothers, *on* or about 2 p. m. on the 6th of March, disap-
19 peared—it is not known where—from the city of Rostov on the Don, having abandoned their effects. That same day about 6 in the evening, Gregory Grin was seen in a 3rd-class railway carriage at the time of the departure of the passenger train for Khartov and Poltava, however, Simeon Grin was not there. Upon search being made in the house of the parents of Gregory Grin in the borough of Oposhnia, province of Poltava, the stolen money was not found, and it was ascertained at the same time that Simeon Grin had sent his brother home under the false pretext of their mother being dangerously ill. Simeon Grin stated to his brother that business detained him at Rostov; as a matter of fact he disappeared from Rostov and did not deliver the money according to destination to the administration of the Vladikavkaz railroad, same having been established by judicial inspection of the books of said administration and by the examination of a person who exclusively superintends the accounting of receipts of money drafts on Novorossceisk.

The stated circumstances are established apart from judicial examinations, by the testimonies of the injured parties, Stephen Zeefo and Andrew Zeefo, and the witnesses D. Apoliro, Ivan Kazarinov, Gorenkova—living next to the lodging of the Grins, Ottens—the manager of the St. Petersburg private commercial bank, Skouratov and Follendorf,—employees of the State bank, Solonov—employed in the administration of the Vladikavkaz railroad, and other witnesses.

According to a decree of the Tagenrog circuit court of Marth 13th of this year, a watch was established over the correspondence from Simeon Grin, for which purpose specimens of his handwriting were forwarded on the 9th of March to the proper post-office branches. The result of this measure was that this data was forwarded
20 to the examining magistrate, pursuant to paragraph 4 of article 368 of the Code of Criminal Procedure, seven letters

of Simeon Grin, sent by him to his father from Siberia (Vladivostock) and afterwards from Japan and America. Important information was found in these letters, from which it was seen that S. Grin committed the embezzlement alone, that he absconded with the money to America, considering himself there in safety as regards pursuit, and that of the money seized he had time already to spend several thousand roubles. That these letters were actually from S. Grin, is proved not only by the similarity of his handwriting, but likewise by the text of the letters, his full signature, though on one envelope it is marked that the letter is from Stomaty Finanskio, and also by the fact that S. Grin sent out to his father his passport and other documents in regard to his identity and a power of attorney to receive 40 roubles deposited in a bank in the city of Rostov on the Don. In the last of these letters from San Francisco in North America, dated June 29th of this year, Simeon gives the address to which he asks that letters would be written to him, and explains to his father that he is living with the documents of a Russian nobleman Valentine Semashko, 25 years of age, in the Grand hotel in San Francisco, where he intends to live about a month and a half. The stamp of said hotel is on the paper and envelope of said letter.

In view of what has been stated, pursuant to article 396—ordered: To arraign in capacity of accused, pursuant to part 1, article 1681 of the Penal Code, the Cossack of the province of Poltava, bailiwick of Oposhnia, of Popovka, Simeon Ivanov Grin, 21 years of age (born February 19, 1880), living with a passport issued in the name
21 of a nobleman Valentine Semashko. "And witnesses" is inscribed (in the original).

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

22 (Translation.)

Order.

Year 1901, 23rd day of July, city of Rostov on the Don.—The acting examining magistrate of the 4th district of the city of Rostov on the Don, having investigated the preliminary examination concerning the accusation of the Cossack Simeon Grin, pursuant to part 1, article 1681 of the Penal Code, of the appropriation and embezzlement of 25,000 roubles, belonging to the Broth. Zeefo, finds (1) that the Cossack of the province of Poltava, Simeon Ivanov Grin, born on February 19th, 1880, alias Valentine Semashko, is arraigned, according to order of this date, in capacity of accused, pursuant to part 1, article 1681 of the Penal Code; (2) that the penalty for said crime consists of being sent to correctional prison wards, according to the 5th degree of article 31 of the Penal Code, for a period ranging from 1 to 1½ years together with loss of all special rights and privileges; (3) that Simeon Grin, having committed the crime, being

of age, is thus accused of a crime, for which, pursuant to paragraph 1 article 389 of the Code of Criminal Procedure, he may be brought up for examination; (4) that apart from that, S. Grin, alias Valentine Semanshko, is to be brought up for examination pursuant to paragraphs 2 and 3, article 389 of the Code of Criminal Procedure, as he is in hiding under a false name, and, as is seen from his letters, is looking out for means to prevent his arrest and the finding out of his address by the authorities, his temporal place of residence being known at present; (5) that in view of the proved fact of embezzlement of a sum over 300 roubles, of the sufficiency of
23 the evidence, as shown in the order of this date in regard to the arraignment of S. Grin alias V. Semashko, in capacity of the accused, and likewise of the severity of the impending penalty, of the flight, after the crime, of the fact that he has not a settled place of residence, pursuant to paragraph 1, of article 416, article 419, 420 and 421 of the Code of Criminal Procedure, in regard to S. Grin, there can be and must be undertaken his detention in custody upon his examination as the accused, ordered: Pursuant to paragraphs 1, 2, 3 of article 389 of the Code of Criminal Procedure, the Cossack Simeon Ivanov Grin, alias Valentine Semashko, is to be brought to the city of Rostov on the Don, in the province of the Don army, in order to be placed at the disposition of the examining magistrate of the Taganrog circuit court of the 4th district of the city of Rostov on the Don.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

24 (Translation.)

Order.

Year 1901, 23rd day of July, city of Rostov on the Don.—Acting examining magistrate of the 4th district of the city of Rostov on the Don, having investigated the preliminary examination in regard to the appropriation and embezzlement of 25,000 roubles belonging to the brothers Zeefo, finds the following:

(1.) The Russian subject, the Cossack of the province of Poltava, bailiwick of Oposhnia, village of Popovka, Simeon, Ivanov Grin, born on February 19th, 1880, who served as hired clerk with the broth. Zeefo, on the 6th of March of this year, in the city of Roztov on the Don, immediately after having received 25,000 roubles belonging to his masters Zeefo, and which were to have been delivered per direction of the master—according to destination, fled with said money to America, and is at present in the city of San Francisco, where he resides with a passport issued in the name of a Russian nobleman, Valentine Semashko, 25 years of age, in the Grand hotel, (America, San Francisco, Grand hotel, M–2 Walentin Semachko).

(2.) That for said crime, being embezzlement of a sum larger than 300 roubles, said Simeon Grin, alias Valentine Semashko, according to the orders of this date, is arraigned in capacity of accused, pursuant to part 1, article 1681 of the Penal Code and is to be brought for examination, and subsequently is to be preliminarily kept under arrest, upon his being examined as the accused.

(3.) That by virtue of paragraph 8 of article 2 of the con-
25 vention in regard to the mutual extradition of criminals, which was concluded between Russia and the United States of North America, the person who is prosecuted for the commission of the mentioned crime under the given circumstances, can be liable to be delivered by the Government of the United States into the hands of the Russian government.

In view of the above stated ordered: To make the proper representation in regard to the extradition in proper form of the Cossack of the province of Poltava, Simeon Ivanov Grin, 21 years of age, residing with a passport, issued in the name of a nobleman, Valentine Semashko, in the United States of North America.

Acting examining magistrate, OKLADNYKH.

"Zeefo" is inscribed (in the original).

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

26 Copy.

(Translation.)

Protocol.

Year 1901, 8th day of March, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taganroy circuit court questioned the person named underneath conforming with article 143 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

DIMITRY IVANOV APALIRA, 50 years of age, of the orthodox religion, able to read and write, Greek subject, live (on Bolshoi Pr. house N 25) B. Sadosaya, N 112, on the 6th of March of this year I called by telephone from the river-side office of Zeefo, the employee Simeon Ivanov Grin, to the head office on the Bolshaya Sadovaya, house N 112, and then drove him to the Petersburgh bank. There I received a check on the State bank for 25000 roubles and ordered Simeon Grin, who did not know for what purpose I had called him up, to go with this check to the State bank, to receive there 25000 roubles and deliver same at the station, to the administration of the Vladikavkaz railroad, in order that said money would be transferred to Novorossesk. At 1 or 1¼ p. m. Simeon Grin went away from me with the check and I have not seen him any more. In the evening I asked Zeefo, by whom I am employed as book-keeper, whether he had re-

ceived through Grin a document from the administration of the Vladikavkaz railroad, acknowledging the receipt of 25000 roubles, and found out, that he had not received anything. It appeared from inquiries made, that on the 6th of March 25.000 roubles were received by Simeon Grin from the cashier of the State bank,
27 there being there a receipt of his to that effect, which has been seen by the brother of Zeefo, Stephen, son of Georgievitch, who knows the handwriting of Grin, that said money was not delivered to the administration of the Vladikavkaz railroad and that our — Kazarinov saw Simeon Grin's brother Gregory in a railway carriage of a train of the Katerinenskaya railroad, which leaves in the evening after the express; I do not know who saw how Simeon gave notice to Gregory of the flight. They disappeared in the clothes they had on, having left all their effects. Simeon is of a low-middle stature, 21 years of age, has dark hair, being almost a "brunet," has not got a beard, has a small hardly perceptible mustache, I do not know of any other peculiarities. He served with us about 8 years, is able to read and write well, but has but little education. His brother I do not know at all. I present to you a letter from his father, from the OPoshuia post-office branch, to the injured party.

D. APALIRA.
Acting examining magistrate, OKLADUYKH.

"His" is inscribed (in the original).

(Copy) conforming with original:
Acting examining magistrate, OKLADUYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

28 Copy.

(Translation.)

Protocol.

Year 1901, 9th day of March, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taga*nroy* circuit court questioned the person named underneath, conforming with article 413 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

Ivan, Vasileev, Kazarinov, 35 years of age, of the orthodox religion, not able to read or write, a peasant of the province of Riazan, of the county of Riashsk of the buiiiwick of Tofansk, live on Poushkinskaya street house N 201, on the 6th of March, on Tuesday, I accompanied my sister and her friend, who was leaving for Kharkov. I carried the effects of the latter into a railway carriage of the 3rd class and there I met Gregory Grin. He was sitting in a railway carriage of the 3rd class of the train leaving for Kharkov; it is an evening passenger train, leaving about 8 in the evening. I asked

him why are you here Grin; at first he did not answer, but on my asking a second time he swore at me.

Article 471 of the Code of Criminal Procedure.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

29

Copy.

(Translation.)

Protocol.

Year 1901, 9th day of March, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taganrog circuit court questioned the person named underneath, conforming with article 143 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

FEDORA MIHAILOVA, GORENKOVA, 23 years of age, not able to read or write, a peasant of the province of Nijenoogorod, county of Ardatov, bailiwick of Piantnitsk, live at the riverside office of Zeefo. I certify to the following: On Tuesday, the 6th of March not later than half past one p. m., Simeon Grin came to his lodging, where his brother was preparing his German lesson, remained not more than 10 minutes, and then both brothers went away, as I saw, together, having locked their room door with a key. The brothers' apartment was adjacent to mine, on the other side of the wall. Their room is in the same corridor as mine and it was absolutely necessary that they should pass in front of my windows. I saw that the brothers did not take anything with them, when they were going away.

Article 471 of the Code of Criminal Procedure.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{Seal of the Examining Magistrate of the Taganrog Circuit Court.}

30

Copy.

(Translation.)

Protocol.

Year 1901, 9th day of March, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taganrog circuit court questioned the per-

son named underneath, conforming with article 413 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

IVAN, PETROV, SKOURATOV, 23 years of age, of the orthodox religion, able to read and write, a burgher of the city of Pavlovsk, of the province of Voronesh, serve as assistant cashier in the "Rostov on the Don" branch of the State bank, live on Poushkinskaya street, house 15 S of Isieva. Upon presentation to me by you of the photograph (the photograph of Simeon Ivanov Grin is presented) I declare to you, that that represents the same man, who on the 6th of March, 1901, about 1 or 1½ p. m. received through me from the treasury of our bank 25,000 roubles upon presentation of check payable out of special running draft account, kept with the St. Petersburg private commercial bank. It is generally the messengers of said bank that receive money per checks of said bank, made payable to bearer, and therefore it was interesting for me to see, who received money per said check, accordingly I drew my attention to his face. He was agitated and, amongst other things asked me: "Where is the administration of the Vladikavkaz railroad." I answered that I do not know. Whether Grin was in the bank by himself or whether he was accompanied by some one else besides, I do not know.

IVAN PETROV, SKOURATOV.

I add the following: I issued to Grin 15,000 roubles in "one-hundred-rouble" bank notes of the new design and 10,000 roubles in "five-hundred-rouble" notes. Grin himself asked for the "five-hundred-rouble" notes.

31 The package consisted thus of 170 bank notes in all.

IVAN SKOURATOV.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, —— ——.

{ Seal of the Examining Magistrate of Taganrog Circuit Court. }

32 (Translation.)

Protocol.

Year 1901, 9th day of March, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taranrog circuit court questioned the person named underneath, conforming with article 413 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

FEDOR JOSEPHOV FOLLENDORF, 32 years of age, of the orthodox religion, able to read and write, of the rank of "provincial secretary," assistant auditor of the "Rostov on the Don" branch of the State bank, upon presentation by you to me of the photograph (the photograph of Simeon Grin is presented) I declare, that I saw that man on Tuesday, March 6th, when he received 25000 roubles upon pres-

entation of check. I did not observe that any one else was with him. He was in a hurry, saying, amongst other things: Faugh, how long you do detain a man.

FEDOR FOLLENDORF.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

33 (Translation.)

Protocol of the Expert Examination.

Year 1901, 9th day of March, city of Rostov on the Don.—The acting examining magistrate of the 4th district of the city of Rostov on the Don, having arrived at the "Rostov on the Don" branch of the State bank, invited to serve as experts for comparing handwriting the assistant book-keeper of the savings bank, Alexander Yakovlev Filippov, whose duty it is to warrant payments on the ground of similarity of signatures, and the assistant book-keeper Nicolas Petrovitch Katranov, whose duty it is to examine the authenticity of signatures on checks, having cautioned them, pursuant to article 443 of the Code of Criminal Procedure, submitted to them—as specimens of the unquestionable handwriting of Simeon Ivanov Grin—manuscripts with his signature, which were found at his place, and a house book, which he kept, and, having presented to the experts the check of the St. Petersburgh private commercial bank dated March 6th, sub N 544714, for the sum of 25000 roubles with the indorsement of S. Grin on the back: "Received twenty-five thousand roubles, S. I. Grin," offered then to the experts to explain—upon comparing said documents whether said indorsement on the back of the check was made by the hand of Simeon Ivanov Grin, wherewith the experts declared, that, upon thoroughly comparing the handwriting of the said documents, they come to the positive conclusion, on the ground of the similarity of the general character of the handwriting and the manner of writing of separate letters, that the signature on the back of the check is made by Simeon Ivanov Grin.

NICHOLAS KATRANOV.
ALEXANDER FILIPPOV.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original.

Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

34 Copy.

(Translation.)

Protocol.

Year 1901, 19th day of July, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taganrog circuit court questioned the persons named underneath, conforming with articles 307 and 443 of the Code of Criminal Procedure, in capacity of injured parties, said persons testifying:

STEPHEN YEGOROVITCH (Georgevitch and Grigorievitch) Zeefo, 37 years of age, British subject, able to read and write, of the orthodox religion, live on B. Sadovaya street, in house N 112 in Rostov on the Don, temporary merchant of Rostov on the Don. The head of our firm "E. L. Zeefo," my father, Yegor Zeefo—resides constantly in the city of London. I am the representative of the firm in the city of Rostov on the Don and act on the strength of a power of attorney given by my father. I file a complaint against my ex-employee, a Cossack of the province of Poltava, Simeon Ivanov Grin, 21 years of age, and beg that criminal proceedings be instituted against him for the embezzlement by him of 25000 roubles belonging to me. I file a civil suit for the same amount, and beg that a search be instituted for Grin and the money stolen by him. On the 6th of March of this year I gave to our book-keeper D-mitry Apoliro an order to make a transfer of 25000 roubles through the administration of the Vladikavkaz railroad to the city of Novorosseesk, said sum to be at the disposal of Mr. Sarsenti, the representative of our firm for export corn trade at the city of Novorosseesk. I did
35 not enter into the particulars of said order and Apoliro entrusted the delivery of the money to the administration to Grin, as the latter had received commissions of the same kind before, and on more than one occasion. That Grin had received the 25,000 roubles from the State bank and had not delivered same according to destination to the administration of the Vladikavkaz railroad, I ascertained positively only on the next morning, on the 7th of March, when I personally ascertained it by inquiries at the State bank and at the administration. Simeon Grin was in our employ as hired clerk for 8 years, and his duties were to execute the orders given by the office. No written contract was made with him. Of late he received 45 roubles and free lodging, which compensation must be considered sufficient for a 20-year-old young man, who had not received any education. It is, however, known to me, that Simeon Grin had already long since undertaken the study of the German language and dreamed of going abroad. Apart from his salary he had no other means.

STEPHEN YEGOROVITCH ZEEFO.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:

Acting examining magistrate, OKLADNYKH.

ANDREW YEGOROVITCH ZEEFO, 32 years of age, of the orthodox religion, able to read and write, British subject, live in the city of Rostov on the Don, on B. Sadovaya street, house 112. It is known to me, that Apaliro undertook the transfer of 25000 roubles through the administration of the Vladikavkaz railroad according to instructions of my brother Stephen, and that on previous occasions considerable sums of money had been entrusted to Simeon Grin for delivery of same to given address, but these occasions were rare; the loss of 25000 roubles falls on our trading concern, as our firm
36 has already paid to the St. Petersburgh private commercial bank said 25,000 roubles, which were borrowed by us on the 6th of March from said bank. My brother Stephen has a full power of attorney with right to transfer his privilege to others, from his father, and I have on the strength of said document a power of attorney from my brother, for which reason the declaration relative to the crime was originally made in my name.

A. Y. ZEEFO.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original.

Acting examining magistrate, OKLADNYKH.

(Seal of the Examining Magistrate of the Taganrog Circuit Court.)

37 (Translation.)

Protocol.

Year 1901, 19th day of July, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taganrog circuit court, questioned the person named underneath, conforming with article 443 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

ARTHUR MAGNUSOV OTTENS, 32 years of age, Lutheran, able to read and write, merchant of Rostov on the Don, live on Staropotchtovaya street, in the house of Kamlewhin, in the 4th district of the city of Rostov on the Don. I am the manager of the "Rostov on the Don" branch of the St. Petersburgh private commercial bank. I present to you a file of commercial letters and in it two commercial letters, dated March 6th, 1901, addressed to our bank by the firm of "Egor L. Zeefo & Co.," bearing the signature of Stephen Zeefo, as empowered by E. Zeefo. In one of the letters S. Zeefo requests to pay to D. Apoliro 18000 roubles in account of bills of lading that are to be received; in the second letter he requests to pay a sum up to 7000 roubles per bills of lading already on hand. In accordance with these communications our bank paid them on the 6th of March of this year 25000 roubles, per check N 544714 of a special running account with the State bank, to D. Apoliro and S. Grin, the employee accompanying him, who had presented said communications, the latter acknowledging by signature the receipt

of said sum of 25000 roubles. I present to you the cash order N 25914 dated March 6th, 1901, relative to payment of 25000
38 roubles to E. Zeefo & Co. in account of bills of lading that were to be and had been presented. On the back of this order is the indorsement of S. I. Grin: "Received twenty-five thousand roubles, being empowered by Messrs. Zeefo & Co. S. I. Grin." I present to you the stub of the check book of the State bank. It is evident from it, that on the 6th of March, 1901, 25000 roubles were delivered per check N 544,714. I likewise present to you the cash account for March 6th, 1901. In the column: Credit in accounts of correspondents—there is, as you see, the entry: "E. Zeefo & Co., in account of bills of lading to be presented and in account of those presented—25000 roubles."

ARTHUR MAGNUSOVITCH OTTENS,
Merchant of Rostov on the Don.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:
Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

39 Copy.

(Translation.)

Protocol.

Year 1901. 19th day of July. City of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of the Taganrog circuit court questioned the person named underneath, conforming with article 443 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

MICHAEL GEORGIEVITCH SOLONOV, 35 years of age, a nobleman, of the orthodox religion, able to read and write, live in the city of Rostov on the Don, no Malaya Sadovaya street, house N 109. I serve in the office of the chief book-keeping department of the administration of the Vladikavkaz railroad in the capacity of assistant book-keeper. Amongst my duties is included also the keeping of accounts in regard to the receipt by the cash department of sums of money from private persons for the transfer of said sums to the city of Novorosseesk. Thus, per example, transfers of any sum by the office of Zeefo through the administration of the Vladikavkaz railroad to the city of Novorsseesk could not evade me. Upon presentation by you to me of the photograph of Simeon Grin, I declare that Grin is not known to me; upon examination of the cash book and file of receipt stubs where all the transfers made to the administration by private persons are obligatorily entered, I assert that in March of this year 25000 roubles for transfer to the city of Novorosseesk were not received from Zeefo. Transfers of sums of money by

the office of Zeefo through the administration of the Vladi-
40 kavkaz railroad have occurred before, but the money used to be brought by other employees of Zeefo, per example, Kalliga.

MICHAEL SOLONOV,
Hereditary Nobleman.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original.
Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

41 Copy.

(Translation.)

Protocol.

Year 1901, 23rd day of July, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of Taganrog circuit court, questioned the person named underneath, conforming with article 307 and 443 of the Code of Criminal Procedure, in capacity of injured party, said person testifying:

STEPHEN YEGOROVITCH ZEEFO. Upon presentation to me by you of 6 photographs sent from Japan, I certify that they represent the Cossack Simeon Ivanov Grin, who absconded with 25000 roubles of my money. Upon presentation to me by you of 6 letters from Vladivostock, Japan and San Francisco, I declare that said letters are written by the hand of Simeon Grin.

STEPHEN E. ZEEFO.

Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:
Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

42 Copy.

(Translation.)

Protocol.

Year 1901, 23rd day of July, city of Rostov on the Don.—The examining magistrate of the 4th district of the city of Rostov on the Don of the circuit of Taganrog circuit court, questioned the person named underneath, conforming with article 443 of the Code of Criminal Procedure, in capacity of witness, said person testifying:

MARK DIMITRIEV MAVRAKI, 27 years of age, of the orthodox religion, able to read and write, Turkish subject, live on B. Sadovaya street, house N 112. You present to me 6 photographs in a wrap-

per with the Yokohama stamp and 6 letters addressed on the envelopes to Ivan Petrovitch Grin, in Oposhnia. I attest that said photographs represent the Cossack Simeon Ivanov Grin who embezzled 25000 roubles, and that the addresses on the said envelopes are written by the hand of Simeon Grin, with whom I served together at Zeefo's. (The material proofs have been presented.)

MARK D. MAVRAKI.
Acting examining magistrate, OKLADNYKH.

(Copy) conforming with original:
Acting examining magistrate, OKLADNYKH.

{ Seal of the Examining Magistrate of the Taganrog Circuit Court. }

(Endorsed:) 13180. Circuit court of the United States ninth judicial circuit northern district of California. In the matter of the petition of Simeon I. Grin for writs of *habeas corpus* and certiorari. Filed November 21st 1901 Southard Hoffman, clerk.

43 Let a writ of *habeas corpus* issue as prayed for in the within petition returnable before me on Monday November 25 at 11 a. m.

WM. W. MORROW,
Circuit Judge.

San Francisco, November 22d, 1901.

Ordered that John A. Schaertzer Jr., be and hereby is appointed an elisor to serve the writ of *habeas corpus* herein.
Nov. 22, 1901.

WM. W. MORROW,
Circuit Judge.

41 *Elisor's Return of Service of Writ of Habeas Corpus.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of SIMEON I. GRIN, on *Habeas Corpus.*

The President of the United States of America to John H. Shine, marshal of the United States for the northern district of California, Greeting:

You are hereby commanded, that you have the body of Simeon I. Grin by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States, for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on the 25th day of November 1901, at 11 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 22nd day of November A. D. 1901.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk*.

I, Southard Hoffman, clerk of the circuit court of the United States, for the northern district of California, do hereby cer-
45 tify the foregoing to be a true copy of the writ of *habeas corpus*, issued in the within-entitled matter.

Attest my hand, and seal of said circuit court, this 22nd day of November A. D. 1901.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk*.

I hereby certify, that on the 22d day of November 1901, I received the writ of which the within is a copy, and that on the 22nd day of November 1901, at San Francisco, in this district, I personally served the said writ, by delivering to and leaving the same with John H. Shine, U. S. marshal, northern district of California, respondent herein.

Dated, San Francisco, Cal., Nov. 22, 1901.

JNO. A. SCHAERTZER, JR., *Elisor*.

(Endorsed:) Filed on return, this 22d day of November 1901. Southard Hoffman, clerk.

46 *Writ of Habeas Corpus and Return Thereto of Respondent.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of SIMEON I. GRIN on *Habeas Corpus*.

The President of the United States of America to John H. Shine, marshal of the United States for the northern district of California, Greeting:

You are hereby commanded, that you have the body of Simeon I. Grin, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States, for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on the 25th day of November 1901, at 11 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 22nd day of November A. D. 1901.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk*.

47 *Return to Writ of Habeas Corpus.*

In obedience to the within writ, I hereby produce the body of Simeon I. Grin, as within directed, and return that I hold the said Simeon I. Grin in my custody under and by virtue of a commitment duly issued by E. H. Heacock, Esq., United States commissioner for the northern district of California, and commissioner duly authorized to act under section 5270 of the Revised Statutes of the United States, a duplicate of which commitment is hereto attached, and made a part of this return

Dated at San Francisco, Cal., November 25th, 1901.

JOHN H. SHINE,
United States Marshal.

Commitment.

UNITED STATES OF AMERICA,
State and Northern District of California, } *ss:*
City and County of San Francisco,

In extradition before the Honorable E. H. Heacock, United States commissioner for the northern district of California, at San Francisco, and commissioner duly authorized to act under section 5270 of the Revised Statutes of the United States.

In the Matter of the Application for the Extradition of SIMEON IVANOW GRIN, alias VALENTINE SEMASHKA, under the Treaty between the United States of America and His Majesty the Emperor of all the Russias, Concluded on March 28, A. D. 1887.

The President of the United States of America to the marshal of the United States for the northern district of California, Greeting:

48 Whereas complaint has been made upon the oath of His Imperial Russian Majesty Consul Paul Kosakevitch, stationed and residing in the city and county of San Francisco, in the State and district aforesaid, before the Honorable John J. De Haven, district judge of the United States for the northern district of California, "that on, to wit, the 6th day of March, 1901, Simeon Ivanow Grin, a Russian subject, was in the employment of the representatives of the firm of E. L. Zeefo & Company, doing business in Rostov, on the Don, in the Empire of Russia, and that said Simeon Ivanow Grin was on said 6th day of March, 1901, residing in said city of Rostov.

That on said 6th day of March, 1901, Stephen Yegorovitch Zeefo was the representative in said city of Rostov on the Don, of said firm of E. L. Zeefo & Company, and that with him associated in said business was Andrew Yegorovitch Zeefo, his brother.

That on said 6th day of March, 1901, said Simeon Ivanow Grin was in the employment of said Stephen Yegorovitch Zeefo as the representative of said firm. That on said day said Simeon Ivanow Grin was employed by said representative of said firm as a clerk.

That on said 6th day of March, 1901, in said city of Rostov on the Don, Empire of Russia, and while said Simeon Ivanow Grin was so as aforesaid employed as such clerk, the sum of twenty-five thousand (25,000) roubles, in Russian money, was entrusted and delivered to said Simeon Ivanow Grin, in said city of Rostov on the Don, by said Stephen Yegorovitch Zeefo, as such representative of said firm, and for the use of said Zeefo as the representative of said firm. That said money was the property of said Stephen Yegorovitch Zeefo, as the representative of said firm, and was entrusted to and received by said Simeon Ivanow Grin, in his capacity as clerk as
49 aforesaid.

That on, to wit, said 6th day of March, 1901, said Simeon Ivanow Grin received said money as aforesaid, and, to wit, on said day wrongfully, unlawfully and feloniously appropriated said money and the whole thereof, and converted the same to his own use, and embezzled the same, and fled, departed and absconded from said city of Rostov on the Don, in said Empire of Russia, with said money, to said city and county of San Francisco, State of California, and has assumed and goes by the name of Valentine Semaska, and not by his said true name, and is now within said city and county and district above named.

That criminal proceedings have been instituted and begun in said city of Rostov on the Don, Empire of Russia, against said Simeon Ivanow Grin, for the said embezzlement, and said Simeon Ivanow Grin has been indicted in said Empire of Russia for said embezzlement of said money, and is a fugitive from the justice of Russia.

That said sum of twenty-five thousand (25,000) roubles is the equivalent in lawful money of the United States of America of the sum of twelve thousand five hundred (12,500) dollars.

That a mandate has been issued from the Department of State of the Government of the United States of America, directing that the honorable judge of this court cause the necessary proceedings to be had in pursuance of the laws of the United States of America, in order that the evidence of the criminality of the said Simeon Ivanow Grin, alias Valentine Semaska, may be heard and considered, and if deemed sufficient to sustain the said charge, that the same may be certified, together with a copy of all the proceedings, to the
50 Secretary of State, that a warrant may issue for his surrender pursuant to the treaty stipulations between the United States of America and said Empire of Russia."

And the said accused, Simeon Ivanow Grin, alias Valentine Semaska, having been arrested upon the warrant issued by the Honorable J. J. De Haven as aforesaid, and having been brought before me, to the end that the evidence of his criminality might be heard and considered, and it appearing that the crime with which the said Simeon Ivanow Grin, alias Valentine Semaska, is charged is embraced within the treaty of extradition aforesaid between the United States of America and His Majesty the Emperor of all the Russias aforesaid, and that the said Simeon Ivanow Grin, alias Valentine Semaska, is a fugitive from justice of Russia, and the said Simeon

Ivanow Grin, alias Valentine Semaska, having been examined by me, the undersigned commissioner, concerning the charge alleged against him in said complaint, and I having found that the evidence is sufficient in law to justify the commitment of the said Simeon Ivanow Grin, alias Valentine Semaska, upon said charge.

These are therefore to command you to receive the said Simeon Ivanow Grin, alias Valentine Semaska, in your custody, to await the order of the President of the United States of America, and you will commit him to the proper jail, there to remain until such surrender shall be made.

In witness whereof, I have hereunto set my hand, at my office in the district aforesaid, this 19th day of November, 1901.

E. H. HEACOCK,

U. S. Commissioner for the Northern District of California at San Francisco and Commissioner Duly Authorized to Act under Section 5270 of the Revised Statutes of the United States.

51 (Endorsed): Filed on return, this 25th day of November 1901. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

At a stated term, to wit: the November term, A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Monday the 25th day of November in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge.

In the Matter of SIMEON IVANOW GRIN, on *Habeas Corpus*. No. 13180.

Order of Court Granting Leave to Russian Government to Intervene, etc.

Now comes John H. Shine, U. S. marshal for the northern district of California, respondent herein, and produces in open court the body of the above-named Simeon Ivanow Grin, and files his return to the writ of *habeas corpus* herein. George D. Collins, Esq., appeared as attorney for the petitioner, and Horace G. Platt Esq., appeared upon behalf of Paul Kosakevitch, imperial Russian consul in San Francisco, and asked and was granted leave to file an intervention and answer to the petition herein on behalf of the Russian government, at or before 10 o'clock a. m. tomorrow.

Thereupon this matter was continued for further hearing to 10 o'clock a. m. tomorrow, and it was ordered, that until the further order of the court, the petitioner remain in custody of the respondent herein. And it was further ordered that a writ of certiorari issue as prayed in the petition herein.

52 *Intervention and Answer.*

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Petition of SIMEON I. GRIN for a Writ of *Habeas Corpus* and Certiorari.

Now comes Paul Kosakevitch, and by leave of court first duly obtained, intervenes herein on behalf of the government of Russia, and for answer to the petition of Simeon I. Grin herein alleges that he, Paul Kosakevitch, is the duly appointed, qualified and acting consul of His Imperial Russian Majesty in said city and county of San Francisco, State of California;

That he makes this intervention and answer on behalf of said Russian government, and answering denies that said Simeon I. Grin is unlawfully imprisoned or restrained of his liberty by John H. Shine, United States marshal for the northern district of California, at the county jail of the city and county of San Francisco, or elsewhere in the said district, or elsewhere. Alleges that said petitioner is imprisoned and held in custody under the authority of the Constitution and laws of the United States relating to the return of fugitives from justice to foreign countries with which the United States has concluded treaties of extradition and under the treaty of extradition now existing between the United States and Russia.

53 Denies that George E. Morse, United States commissioner, whose name is subscribed to the complaint referred to in said petition, and before whom the complainant in said complaint was sworn, was not at the time of receiving said complaint, nor at the time of taking said oath thereto of the said complainant, nor at the time of filing said complaint, nor at the time of signing his name thereto as United States commissioner, a United States commissioner duly or specially or at all authorized by any court of the United States or by any judge of a court of general jurisdiction of any State to receive or take said complaint, or to take the oath of the complainant thereto.

Denies that at the time of signing or issuing of said warrant of arrest referred to in said petition, or at the time of the said making or filing of said complaint, the said E. H. Heacock, Esq., was not authorized by any of the courts of the United States, nor by any judge of a court of record of general jurisdiction of any State to hold or take cognizance of said or any complaint in extradition proceedings, or to issue a warrant for the apprehension or arrest of any person so charged, or to hold or consider or pass upon evidence of criminality of any person so charged, and alleges that upon an order of the district court of the United States for the northern district of California duly made, given and entered on the 17th day of October, 1901, said E. H. Heacock, Esq., was authorized to hold and take cognizance of said or any complaint in extradition proceedings and to issue a warrant for the apprehension or arrest of any person

so charged and to hold and consider and pass upon evidence of criminality of any person so charged.

54 Denies that the evidence before said E. H. Heacock, Esq., and being the same referred to in the said warrant of commitment, totally or at all fails to show or in no respect tends to show that said petitioner committed the crime of embezzlement in the Empire of Russia, or elsewhere, and alleges that said evidence proves, and in every respect tends to prove that said petitioner did commit the crime of embezzlement in the Empire of Russia as charged in said complaint.

Denies that a transcript of the evidence before said E. H. Heacock, Esq., is attached to a copy of the said petition, or that a copy of the papers or records upon which said extradition is sought by the Russian government is thereto annexed, but alleges that there is attached to said petition only a translation of a portion of said evidence.

Denies that the papers and records referred to in said petition and forwarded by the government of Russia in this matter and submitted to said E. H. Heacock, Esq., are not authenticated so as to entitle them to be received as evidence of the criminality of petitioner by the tribunals of Russia, or according to the laws of Russia, and alleges that said papers and records are authenticated as required by the laws of the United States in extradition proceedings.

Denies that said petitioner has not been indicted in Russia for said or any charge of embezzlement, but alleges that said prisoner has been indicted in Russia upon the charge of embezzlement set forth in said complaint.

Denies that according to the laws of the State of California the evidence attached to said petition, or the evidence before said commissioner, would not justify the apprehension or commitment

55 of said petitioner for trial upon a charge of embezzlement, if the matters attested and proved by said evidence occurred in the State of California, but alleges that the evidence submitted before said commissioner would justify petitioner's apprehension and commitment for trial under the charge of embezzlement set forth in said complaint if the matters so attested and proved by said evidence had occurred in the State of California.

Denies that the demand or requisition for the surrender of said petitioner to the Russian government is not made by the diplomatic agent of said government, nor by a superior consular officer, and alleges that said demand is made by M. De Wallant, charge d'affaires *ad interim* of the Russian embassy in Washington.

Denies that the application of Russia for the extradition of said petitioner is not and never has been accompanied by any authenticated copy of a warrant of arrest or of some other equivalent judicial document issued by a judge or magistrate duly authorized to do so, and alleges that said application is accompanied by an authenticated copy of a warrant of arrest and of other equivalent judicial documents issued by a judge duly authorized to do so.

Denies that the demand for said petitioner's extradition is not

accompanied by a copy of the judgment of any court whatever, and alleges that said demand and said records are authenticated in accordance with the treaty now existing between Russia and the Government of the United States, and in accordance with the laws of the United States.

Denies that the said commissioner never acquired or possessed any or the least authority to hold or consider or determine the said proceedings in extradition, or to make, order or issue or sign
56 the said commitment, and alleges that the commissioner was duly and fully authorized to hold, consider and determine the said proceedings, and to make, order and issue and sign the said commitment.

Denies that the matters set forth in said complaint sworn to before United States Commissioner George E. Morse do not constitute the crime of embezzlement as that offense is defined by the laws of the State of California, but alleges that said matters do constitute said crime of embezzlement as defined by the laws of the State of California.

Denies that at the time said complaint was sworn to, or at the time of the issuance of the said warrant for arrest, or at the time of the service and execution of the said warrant, said petitioner was at any of said times a resident or inhabitant of the southern district of California.

Denies that for any of the reasons set forth in said petition, or any reasons at all, the said imprisonment of petitioner is unlawful or in violation of the Constitution or laws of the United States or the fifth amendment of the Constitution of the United States, or sections 5270 or 5271 of the Revised Statutes of the United States, or of any constitution, laws, amendments, sections or statutes or at all.

Wherefore, intervenor prays that said petitioner be not discharged from imprisonment, and that these proceedings be dismissed.

PLATT & BAYNE,
Attorneys for Intervenor.

57 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*
Northern District of California, }

Paul Kosakevitch, being duly sworn, deposes and says:

That he has read the foregoing intervention and answer and knows the contents thereof, and the same is true of his own knowledge except as to those matters therein stated on information or belief, and as to those matters he believes it to be true.

PAUL KOSAKEVITCH.

Subscribed and sworn to before me this 25th day of November, A. D. 1901.

[SEAL.] FRANK L. OWEN.
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed November 26, 1901, Southard Hoffman, clerk by W. B. Beaizley, deputy clerk,

58 At a stated term, to wit: the November term, A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Tuesday the 26th day of November in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge.

In the Matter of SIMEON IVANOW GRIN, on *Habeas Corpus*.
No. 13180.

Minute Order, Proceedings on Hearing.

In this matter the petitioner Simeon Ivanow Grin, and his attorney George D. Collins Esq., and also Horace G. Platt Esq., attorney for Paul Kosakevitch, imperial Russian consul in San Francisco, intervenor, were present in open court, and said attorney for intervenor thereupon filed an intervention and answer to the petition herein upon behalf of intervenor.

It was agreed between the attorneys for the respective parties that the writ of certiorari ordered on yesterday to be issued herein, be considered as having issued; and it appearing that the original record of the proceedings before the judge of the district court for this district, and before E. H. Heacock Esq., U. S. commissioner for this district and city, is before the court, it was further agreed that said record may be considered as the return to certiorari herein without being filed in this cause, and that either party hereto may introduce and read in evidence such portions of said record as they may deem proper, subject to the ruling of the court.

59 Thereupon hearing was had upon the issues joined by the petition, writ of *habeas corpus* and return thereto, and intervention and answer to petition.

Petitioner's attorney introduced and read certain documentary evidence, and the further hearing hereof was continued to 9 o'clock a. m. tomorrow.

At a stated term, to wit: the November term A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Wednesday the 27th day of November in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge.

In the Matter of SIMEON IVANOW GRIN, on *Habeas Corpus*.
No. 13180.

Minute Order, Proceedings on Hearing.

In this matter the petitioner, and George D. Collins, Esq., his attorney, and Horace G. Platt, Esq., attorney for the intervenor,

being present in open court, the hearing hereof was thereupon resumed.

Further documentary evidence was introduced on behalf of petitioner, and the matter was continued for further hearing until Saturday next at 10 o'clock, a. m.

60 At a stated term, to wit: the November term A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Saturday the 30th day of November in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge.

In the Matter of SIMEON IVANOW GRIN on *Habeas Corpus*.

No. 13180.

Minute Order, Proceedings on Hearing.

In this matter, the petitioner, with George D. Collins Esq., his attorney, and Horace G. Platt Esq., attorney for the intervenor, being present in open court, the hearing hereof was thereupon resumed, arguments of the attorneys for the respective parties were heard, and the matter was submitted to the court for consideration and decision.

61 At a stated term, to wit: the November term, A. D. 1901 of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Wednesday the 18th day of December in the year of our Lord one thousand nine hundred and one.

Present: The Honorable William W. Morrow, circuit judge.

In the Matter of SIMEON I. GRIN, on *Habeas Corpus*. No. 13180.

Minute Order, Remanding Petitioner, Allowing Appeal to Supreme Court United States, etc.

This matter heretofore heard and submitted to the court for consideration and decision, having been fully considered, and the opinion of the court having been filed, it was, in accordance with said opinion ordered that the writ of *habeas corpus* herein be discharged, that the petition of said Simeon I. Grin herein, be dismissed, and that said Simeon I. Grin be remanded to the custody from whence he has been produced, and that judgment be entered herein accordingly.

Upon motion of George D. Collins, Esq., attorney for petitioner it was ordered that petitioner be and is allowed an exception to the foregoing ruling, and it was further ordered that petitioner be and hereby is allowed an appeal to the Supreme Court of the United States from the judgment of remand ordered to be entered herein;

that the amount of the bond for costs to be furnished upon said appeal be and hereby is fixed at the sum of $200., and that said Simeon I. Grin remain in the custody of the respondent John H. Shine, U. S. marshal for the northern district of California, pending the determination of the appeal of petitioner herein by the Supreme Court of the United States.

62 In the Circuit Court of the United States for the Northern District of California.

In the Matter of SIMEON IVANOW GRIN, on *Habeas Corpus*.

No. 13180.

Judgment.

This matter having been regularly brought on for hearing before the court and the judge thereof upon the issues joined herein, George D. Collins Esq., appearing upon behalf of the petitioner, and Horace G. Platt Esq. appearing upon behalf of Paul Kosakevitch, imperial Russian consul at San Francisco, intervenor, and the same having been heard and submitted, and due consideration thereon had, it is by the court and the judge thereof now here considered and adjudged:

That Simeon Ivanow Grin, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of the petition herein illegally restrained of his liberty as therein alleged.

And it is further considered and adjudged that the said Simeon Ivanow Grin be, and he hereby is remanded to the custody of John H. Shine, United States marshal for the northern district of California, respondent herein, from whence he has been produced.

Judgment entered December 18th, 1901.

SOUTHARD HOFFMAN, *Clerk*.

A true copy.

Attest:— SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk*.

(Endorsed:) Filed December 18, 1901, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

63 In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

In the Matter of SIMEON IVANOW GRIN, on *Habeas Corpus*.

No. 13180.

Certificate to Judgment-roll.

I, Southard Hoffman, clerk of the circuit court of the United States, for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled matter.

Attest my hand and the seal of said circuit court, this 18th day of December 1901.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk*.

(Endorsed:) Judgment-roll. Filed December 18, 1901, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

64 *Mandate of Secretary of State of the United States Certifying that S. I. Grin, alias, etc., Should be Apprehended.*

Department of State to any justice of the Supreme Court of the United States, and judge of the circuit or district courts of the United States in any district; any judge of a court of record of general jurisdiction in any State or Territory of the United States, or to any commissioner specially appointed to execute the provisions of title LXVI of the Revised Statutes of the United States, for giving effect to certain treaty stipulations between this and foreign governments, for the apprehension and delivery up of certain offenders.

Whereas, pursuant to existing treaty stipulations between the United States of America and Russia for the mutual delivery of criminals, fugitives from justice in certain cases, Mr. de Wollant, chargé d'affaires *ad interim* of Russia accredited to this Government has made application in due form, to the proper authorities thereof, for the arrest of Simeon Ivanow Grin, alias Valentine Semashko, charged with the crime of embezzlement and alleged to be a fugitive from the justice of Russia and who is believed to be within the jurisdiction of the United States.

And whereas, it appears proper that the said Simeon Ivanow Grin, alias Valentine Semashko should be apprehended, and the case examined in the mode provided by the laws of the United States aforesaid.

Now, therefore, to the end that the above-named officers, or any of them, may cause the necessary proceedings to be had, in pursuance of said laws, in order that the evidence of the crim-
65 inality of the said Simeon Ivanow Grin alias Valentine Semashko may be heard and considered, and, if deemed sufficient to sustain the charge, that the same may be certified, together with a copy of all the proceedings, to the Secretary of State, that a warrant may issue for his surrender, pursuant to said treaty stipulations, I certify the facts above recited.

In testimony whereof, I have hereunto signed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 8th day of October, A. D. 1901, and of the Independence of the United States the 126th.

[Seal of the Department of State, U. S. A.]

ALVEY A. ADIE,
Acting Secretary of State.

(Endorsed:) No. 12490. U. S. district court, northern district of California. In the matter of the extradition of Simeon Ivanow Grin alias Valentine Semashko. Mandate of Secretary of State of the U. S. certifying that S. I. Grin alias, &c., should be apprehended. Filed Oct. 16, 1901. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

66 At a stated term of the district court of the United States for the northern district of California, held at the court-room in the city and county of San Francisco, on Thursday, the 17th day of October, A. D. 1901.

Present: The Honorable John J. De Haven, judge.

By the court ordered that E. H. Heacock, United States commissioner for the northern district of California at San Francisco, be and he is hereby, authorized to discharge all the duties and exercise all the powers which may be performed by a justice of the supreme court, a circuit judge or district judge under section 5270 of the Revised Statutes of the United States of America.

I hereby certify that the forgoing is a full, true and correct copy of an original order made and entered in the above matter.

Attest my hand and the seal of the said district court this 19th day of November, A. D. 1901.

[Seal of U. S. District Court.]

GEO. E. MORSE, *Clerk*,
By J. S. MANLEY,
Deputy Clerk.

67 "Copy.

"Translation from the Russian.

"8449.

"*Ordering.*

"Rostov on the Don, the 10 of August, 1901.—The examining "magistrate appointed for the 4 ward of Rostov, at the Taganrog "circuit court, having acquainted himself with the inquisition of "the case concerning the Cossack Simeon Grin, indicted for the "embezzlement of 25,000 roubles belonging to the representatives of "the firm 'E. L. Zeefo and Co.' for the exportation of corn in "Rostov on the Don, finds what follows: (1) that the person ar- "raigned for said crime, pursuant to c. 1. of art. 1681 of the Penal "Code, is a Cossack of the prov. Poltava, of the riding Zenkov, of the "commune Oposhnia, of the vill. Popovka—Simeon Ivanov Grin, "who since the end of June last resided in San Francisco, in the "Grand hotel, with a passport delivered in the name of the noble- "man Valentine Semashko; (2) that the party injured, Stephen "Yegorov *Grin*, has brought a civil action in the sum of 25,000 "roubles against said defendant, S. Grin; (3) that as a proof of his "claims asserted in the capacity of the party injured, S. E. Zeefo pro- "duced to the examining magistrate a full power given to the plain-

"tiff S. E. Zeefo as to the chief representative of the above-mentioned "corn trade, by his father E. L. Zeefo, who has his usual residence "in London, said power being authenticated by the notary public "of London, Alexander Rodgeway, on the 19 November, 1900, and "the signature of the latter, by the imperial consul general of "Russia on the 7/20 November 1900; (4) that in view of these facts "as well as of the circumstances exposed in the ordering by which "an indictment is preferred against S. Grin, the right of the party
"injured, S. E. Zeefo, to bring a civil action in the present
68 "case, is indubitable. Therefore the examining magistrate
"has decreed what follows: to admit Stephen Yegorow Zeefo "as a plaintiff in the case concerning Simeon Ivanov Grin, a Cos- "sack, who stands indicted pursuant to c. 1 of art. 1681 of the Penal "Code.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

"Copy.

"*Ordering.*

"Rostov on the Don, the 10 of August, 1901.—The examining "magistrate at the Taganrog circuit court, for the 4 ward of Rostov, "having acquainted himself with the (preliminary) inquisition re- "ferring to a Cossack of the prov. Toltavo, riding of Zinkov, com- "mune of Oposhnia, vill. Popovka, Simeon Ivanov Grin, who stands "indicted, in pursuance of c. 1 art. 1681 of the Penal Code, for the "embezzlement of 25,000 r. belonging to the representatives of Zeefo's "corn trade in Rostov, finds what follows: (1) that the party in- "jured, Stephen Yegorovitch Zeefo, who has brought a civil action "against the defendant Simeon Grin, and has been admitted to the "case as a plaintiff, has sued for the distress of money and other "chattels that would be found in possession of the defendant, S. "Grin, at his apprehension; and (2) that said claim must be satis- "fied, it being proved that on the 6 March last S. Grin embezzled "25,000 roubles belonging to Zeefo, and that the defendant has ab- "sconded with said money from Rostov to America abandoning his "own small property, such as 40 roubles in the savings bank and "his clothes, forming in all an amount of about 150 roubles; though
"S. Grin possessed no other property, earning only 45 roubles
69 "a month and spending all his earnings, as appears from his
"receipt book. Considering that the money of which S. Grin "may find himself possessed when he is arrested *are* Zeefo's property "and must be considered as the *corpus delicti*, and that all such "chattels as may be found in his possession, except a suit of clothes, "were acquired with the money embezzled from Zeefo, which is par- "tially proved by S. Grin's own letters, sent by him to his father "from San Francisco, the examining magistrate has decreed what "follows: to deem that such property as should be found in S. Grin's

"possession in the moment of his arrest, shall be distrained and "transferred to Rostov on the Don with the defendant.

"The examining magistrate appointed for the 4 w-rd of Rostov,
"OKLADN-KH.

"The examining magistrate appointed for the 4 ward of Rostov,
"OKLADNYKH.

"A true copy:
"The examining magistrate appointed for the 4 ward of Rostov,
"OKLADNYKH.

"Translation warranted conformable to the original.
"M. BUDAGOW,
"*Collegiate Assessor.*

70 "Translation from the Russian.

"8449.

"*Ordering.*

"Rostov on the Don, 23d July, 1901.—The examining magistrate "appointed for the 4th ward of Rostov, having acquainted himself "with the preliminary inquiry of the case concerning a Cossack "from the prov. of Poltava, Simeon Grin, indicted for the embezzle-"ment of 25,000 roubles belonging to the brothers Zeefo, finds what "follows:

"The representatives of an ancient house trading in corn export, "in Rostov on the Don, the British subjects Stephen and Andrew "Yegorovitch Zeefo lodged an information against their hired clerk "Simeon Ivanov Grin, a Cossack of the prov. of Poltava, for having "embezzled a sum of 25,000 roubles received by him on the 6 March "last according to a cheque payable to the bearer, with which sum "he absconded on the same day from Rostov, accompanied by his "brother Gregory, aged 14, without delivering the sum named to "the administration of the Wladikavkaz railway in Rostov.

"The preliminary inquiry ascertained what follows: On the 6 "March last D. Apalira, who is employed in said trade-house as "book-keeper, received from his master Stephen Zeefo the order to "transfer the sum of 25,000 roubles to Sarcenti, the representative "of said firm in Novorosseesk, to what effect the money was to be "taken, on presentation of a cheque of the St. Petersburg private "commercial bank, from the Rostov divisional office of the "Bank of the State, and brought to the administration of the "Wladikavkaz railway in order to be transferred therefrom to "Novorosseesk. D. Apiliza called immediately by tele-
71 "phone from Zeefo's river side office, the clerk Simeon Grin "who was living there, without informing him of his "intentions, came to the St. Petersburg private commercial "bank with him, exhibited there commercial letters of Stephen "Zeefo's, demanding payment of 25,000 r., then ordered Simeon "Grin to receive the cheque N. 544,714, to receive money on "it and to bring it to the administration of the Wladikavkaz rail-

"way. On the 6 March last, about 1 p. m., Simeon Grin acknowl-
"edged by his signature the receipt of a cheque for rbl. 25,000,
"whereupon he received immediately, by the strength of said cheque,
"the sum of rbl. 25,000 from the Rostov divisional office of the
"Bank of the State, against a quit written in his own hand, which
"has been ascertained on the 9 March last by an inspection of the
"quit's text, by an examination of its handwriting by specialists in
"discerning the authenticity of signatures, and by an exhibition of
"Simeon Grin's photograph to the clerks of the Bank of the State
"who were present when S. Grin received said money. Simeon
"Grin was in a hurry, and requested that the sum should be paid
"to him in bank notes of five hundred and of hundred roubles, so
"he received said sum in a pack consisting of 170 bank notes. There-
"after Simeon Grin appeared for a very short time in his lodging,
"took away his brother Gregory, aged 14, who lived with him and
"was left in his charge, locked his apartment, whereupon, on the 6
"March, after 1 p. m., both brothers absconded from Rostov, aban-
"doning such chattels as belonged to them. On the same day, after
"5 p. m., Gregory Grin has been seen in a 3d-class railroad carriage
"of a passenger train starting for Harkov and Poltava, while
"Simeon Grin was not with him. A search having been made in the
"house of Gregory Grin's parents, in the borough Oposhna,
72 "in the prov. of Poltava, the stolen money was not found,
"and it was ascertained at this opportunity that Simeon Grin
"had sent his brother home, under the false pretext that their
"mother was dangerously ill. Simeon Grin told his brother that
"he was detained in Rostov by his business; but in reality he ab-
"sconded from Rostov, without delivering the money to the admin-
"istration of the Wladikavkaz railroad, which was ascertained by a
"judicial inspection of the registers of said administration and by
"the examination of a person exclusively superintending the ac-
"countability of money transfers made to Novorossiesk.

"Said circumstances have been made good, except by judicial in-
"spections, by the evidence of Stephen and Andrew Zeefo, the
"offended parties, and of the witnesses D Apaliro, John Kasarinow,
"Gorenkova, who live in a lodging adjacent to that of the brothers
"Grin, Ottens, the manager of the St. Petersburg private commer-
"cial bank, Skuratov and Follendorf, employed in the bank of the
"State, Solonov, employed in the administration of the Wladikavkaz
"railroad, and of other witnesses.

"According to a decree of the Taganrog circuit court u. d. of the
"13 March last, a surveyance of Simeon's Grin'- correspondence was
"set about, to which effect specimens of his handwriting were
"sent to the respective post-offices on the 9 March. The result of
"that measure was that on said date were sent to the examining
"magistrate, pursuant to c. 4 of art. 368 of the Code of Criminal Pro-
"cedure, 7 letters of Simeon Grin, addressed by him to his father
"from Siberia (Wladivostok), then from Japan and America. Those
"letters proved to contain important information, from which it
"appears that the embezzlement was committed by S. Grin
73 "alone, that he absconded with the money to America, think-
"ing himself safe there against persecution, and that he had

"already spent several thousands of the spoliated money. That the "writer of said letters is no other than S. Grin, is proved not only "by the resemblance of handwriting, but also by the contents of the "letters and by his full signature, though one of the envelopes bears "the superscription that the letter is addressed by Stomaty Fimana-"kio, as well as by the fact that S. Grin has sent to his father his "passport and other papers identifying his person, and a procura-"tion for the receipt of 40 roubles deposited in the bank of Rostov. "In the last of these letters, dated from St. Francisco in North "America, 29 June last, Simeon Grin gives his address and requests "that letters should be written to him, and informs his father that "he lives with the documents of a Russian nobleman Valentine "Semashko, aged 25, in the Grand hotel of San Francisco, where "he intends to stay about one month and a half. The paper and "envelope of said letter bears the stamp of said hotel.

"In the face of these facts and pursuant to art. 396 of the Code of "Crim. Proceed. the examining magistrate has decreed what follows: "To prefer an indictment according to c. 1 of art. 1681 of the Penal "Code, against Simeon Ivanov Grin, a Cossack of the prov. of Pol-"tava, commune of Oposhnia, vill. Popovka, aged 21 (born on the "19 February, 1880), using the passport of the nobelman Valentine "Semashko.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examiner, OKLADNYKH.

74 "*Ordering.*

"Rostov on the Don, 23 July, 1901.—The examining magistrate "appointed for the 4 ward of Rostov, having examined the prelim-"inary inquiry of the case concerning the Cossack Simeon Grin, "indicted by virtue of the articles 1 and 1681 of the Penal Code for "embezzlement of 25,000 roubles belonging to the brothers Zeefo, "finds what follows: (1) that Simeon Ivanov Grin, a Cossack of the "prov. of Poltava, born on the 19 February 1880, alias Valentine "Semashko, according to an ordering bearing the above date, has "been arraigned pursuant to c. 1 of art. 1681 of the Penal Code; (2) "that the penalty for said offence consists in the sending to cor-"rectional sections for prisoners according to the 5 degree of art. 31 "of the Penal Code, for a time varying from one year to one year "and a half, joined to the loss of all special rights and privileges; "(3) that Simeon Grin, having committed the crime when he was "already of age, is accordingly arraigned for an offense by reason "of which he may be brought to the trial by virtue of c. 1 of art. "389 of the Code of Criminal Procedure; (4) that besides, S. Grin, "alias Valentine Semashko, is liable to be brought to trial pursuant "to cc. 2 and 3 of art. 389 of the Code of Criminal Procedure, as he "absconds under a false name and, as appears from his letters, looks "out for means that should prevent his apprehension and the finding "out of his address by the authorities, his temporal abode being the "only one that is known at present; (5) that taking into considera-

"tion the well-proved fact of embezzlement of a sum above 300 rou-
"bles, the sufficient evidence referred to in the ordering
75 "under the above date, decreeing the indictment of S. Grin,
"alias V. Semashko, as well as the severity of the impending
"penalty, the offender's flight after the perpetration of the crime,
"and his lack of a usual abode, pursuant to c. 1 of art. 416, 419, 420
"and 421 of the Code of Criminal Procedure, the measure which can
"and must be taken with respect to S. Grin is the detention in
"custody after he shall be heard as a defendant, has decreed what
"follows: That pursuant to cc. 1, 2 and 3 of art. 389 of the Code of
"Criminal Procedure, Simeon Ivanov Grin, alias Valentine Se-
"mashko, shall be brought to trial to Rostov, in the province of the
"Don army, and put to the disposition of the examining magistrate
"at the Taganrog circuit court, appointed for the 4 ward of Rostov.
"The examining magistrate, OKLADNYKH.

"A true copy.
"The examining magistrate, OKLADNYKH.

"*Ordering.*

"Rostov on the Don, 23 July, 1901.—The examining magistrate
"appointed for the 4 ward of Rostov, having acquainted himself
"with the preliminary inquisition of the case regarding the embez-
"zlement of 25,000 roubles belonging to the brothers Zeefo, finds
"what follows:

"1. A Russian subject, a Cossack of the prov. Poltava, commune
"of Oposhnia, vill. Popovka, Simeon Ivanov Grin, born on the 19
"February 1880, who was employed by the brothers Zeefo as a hired
"clerk, having on the 6 March last received in Rostov a sum of
"25,000 r. belonging to his masters Zeefo and which were to be dis-
"posed of according to his master's direction, immediately fled to
"America with that money and abides at present at San Fran-
76 "cisco, where he lives with a passport of a Russian nobleman
"Valentine Semashko, aged 25, in the Grand hotel;

"2. That by reason of said crime, which is an embezzlement in
"consideration of a sum above 300 roubles, said Simeon Grin, alias
"Valentine Semashko, by virtue of writs issued under the above
"date and according to the articles 1 and 1681 of the Penal Code
"has been put to trial and is liable to be brought to trial and subse-
"quently to provisional arrest, after he shall be heard as a defend-
"ant;

"3. That by virtue of count 8 art. 2 of the treaty on mutual extra-
"dition of criminals, concluded between Russia and the United
"States of North America, an individual prosecuted for said crime
"may, under the above-mentioned circumstances, be liable to extra-
"dition by the Government of the United States to the Russian
"government.

"In view of these facts, the examining magistrate has decreed
"what follows: To put up a demand concerning the extradition, in
"due order, of Simeon Ivanov Grin, a Cossack of the prov. Poltava,

"aged 21, living with the passport of the nobleman Valentine "Semashko, to the United States of North America.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

77 "Copy.

"*Protocol.*

"Rostov on the Don, 8 March 1901.—The examining magistrate "appointed for the 4 ward of Rostov, in the circuit of the Taganrog "circuit court, heard the named-underneath person in conformity to "the art. 443 of the Code of Criminal Procedure, in the capacity of "a witness, and he testified as follows:

"DMITRI IVANOV APALIRA, aged 50, of the orthodox religion, can "read and write, a Grecian subject, live (on the great prosp. house "No. 25) on the Great Sadovaya, No. 112. On the 6 March last I "called the clerk Simeon Ivanov Grin from the riverside office of "Zeefo by telephone to the chief office situated on the Great Sado-"vaya, h. 112, and then drove with him to the Bank of St. Peters-"burg. Here I received a cheque for 25,000 roubles, payable at the "Bank of the State, and gave order to Simeon Grin, who did not "know why he had been called for by me, to take said cheque to the "Bank of the State, to receive there the sum of 25,000 roubles, and "to deliver them on the station to the administration of the Wladi-"kavkaz railway, wherefrom said money was to be transferred to "Novorosseesk. At one or a quarter past one p. m. Simeon Grin left "me with the cheque, and since that time I saw him no more. In "the evening I asked Zeefo, with whom I have a service as account-"ant, whether he had received from Grin an acknowledgement of "receipt for 25,000 roubles from the administration of the Wladi-"kavkaz railway, and he replied that he did not receive anything.

78 "It was known from information taken that on the 6 March "a sum of 25,000 roubles had been paid out by the cashier of "the Bank of the State to Simeon Grin, who left there a re-"ceipt for it, which has been seen by the brother of Zeefo, Stephen "Grorgywitch, who knows Grin's handwriting, that said money had "not been delivered to the administration of the Wladikavkaz rail-"road, and that our factor Kasarinov had seen the brother of Simeon "Grin, Gregory, in a railway carriage of the Catherine railway, in a "train starting in the evening, after the express. Who saw Simeon "give notice to Gregory of the impendent flight, I cannot tell. They "absconded in the clothes they had on before, leaving all their things "behind. Simeon is of a low middle stature, aged 21, has dark, "almost black hair, wears no beard, has a small almost imperceptible mustachio; I know of no other particularities. He had been "in our service for about 8 years, could read and write well, but had "little education; as to his brother, I do not know him at all. I

"exhibit to you a letter from his father, addressed by the post-office "of Oposhnia, 'To the injured party.'

"D. APALIRA.

"The examining magistrate, OKLADNYKH.

"A true copy.

"The examining magistrate, OKLADNYKH.

79 "Copy.

"*Protocol.*

"Rovtov on the Don, the 9 March, 1901.—The examining magis- "trate for the 4 ward of Rostov, in the circuit of the Taganrog cir- "cuit court, has heard the named-underneath person as a witness, "in conformity to art. 443 of the Code of Criminal Procedure, and "he testified as follows:

"JOHN VASSILIEV KASARINOV, aged 35, of the orthodox religion, "can neither read nor write, a peasant of the prov. Riasan, district of "Riashsk, commune Fofanskaya; I live on the Pushkinskaya street, "house No. 201. On Tuesday, 6 March I came to see away my "sister and her friend who departed to Kharkov. I carried the "luggage of the latter into a 3d-class carriage, and found that "Gregory Grin was there. He sat in a 3d-class carriage of the train "bound for Kharkov: it is an evening passenger train which starts "after 7 p. m. I asked him, 'Why are you here, Grin?' At first "he did not answer, but when I repeated my question he swore at "me. In conformity to art. 471 of the Code of Criminal Procedure.

"The examiner, OKLADNYKH.

"A true copy:

"The examiner, OKLADNYKH.

80 "Copy.

"*Protocol.*

"Rostov on the Don, on the 9 March, 1901.—The examining "magistrate appointed for the 4 ward of Rostov, in the circuit of the "Taganrog circuit court, has heard the underneath named as a wit- "ness, in conformity to art. 443 of the Code of Criminal Procedure, "and she testified as follows:

"THEODORA MIKHAILOVA GORENKOVA, aged 23, can neither read "nor write, a peasant woman of the prov. Nishni-Novgorod, district "Ardatov, commune Piatnitzkaya, live in Zeefe's riverside office. I "certify to what follows: On Tuesday, 6 March not later than at half "past one, Simeon Grin came to his apartment, where his brother "was preparing his German lesson; he did not stay more than 10 "minutes, whereupon I saw both brothers depart together, after "having locked their room's door. A wall separated the brother's "apartment from mine, which is adjacent. Their room is in the "same corridor as mine, and they cannot do otherwise than pass my

" windows. I saw that the brothers had nothing with them when
" they went away. In conformity to art. 471 of the Code of Criminal
" Procedure.

" The examining magistrate, OKLADNYKH.

"A true copy:

" The examining magistrate, OKLADNYKH.

81 " Copy.

"*Protocol.*

" Rostov on the Don, the 9 March 1901.—The examining magis-
" trate appointed for the 4 ward of Rostov, in the circuit of the
" Taganrog circuit court, heard the named underneath as a witness,
" in conformity to art. 443 of the Code of Criminal Procedure, and
" he testified as follows:

" JOHN PETROV SKURATOV, aged 23, of the orthodox religion, can
" read and write, a citizen of Pavlovsk, in the prov. Voronesh; am
" employed as cashier's assistant in the Rostov divisional office of
" the Bank of the State, live on the Pushkinska street, h. N. 15 f. of
" Issayeva. Having seen the photograph you exhibited to me (the
" photograph of Simeon Ivanov Grin was exhibited), I declare to
" you that it represents the same man who, on the 6 March 1901,
" about 1 or half past 1 p. m., received from me 25,000 roubles out
" of our bank's cash, having presented a cheque payable out of a
" special running account against bills of exchange, opened to the
" St. Petersburg private commercial bank. The cheques of said
" bank, payable to the bearers, are generally presented by commis-
" sioners of said bank, therefore I was curious to see who claimed
" payment of the cheque, and looked intently at his face. He was
" obviously agitated, and asked me among other things 'Where was
" the administration of the Wladikavkaz railway.' I answered that
" I did not know. Whether Grin had come to the bank alone or
" with somebody else, I cannot tell.

" JOHN PETROV SKURATOV.

" I add what follows: I paid out to Grin 15,000 roubles in 100-
" roubles bank notes of the new model, and 10,000 roubles in 500-
" roubles bank notes. It was Grin himself who asked for
82 " 500-roubles notes. Thus, the whole packet contained 170
" bank notes.

" JOHN SKURATOV.

" The examining magistrate, OKLADNYKH.

"A true copy:

" The examiner, OKLADNYKH.

"*Protocol.*

"Rostov on the Don, 9, March, 1901.—The examining magistrate "appointed for the 4 ward of Rostov, in the circuit of the Taganrog "circuit court, heard the named underneath as a witness, conformably to art. 443 of the Code of Criminal Procedure, and he declared "what follows:

"THEODOR JOSEPHOV FOLLENDORF, aged 32, of the orthodox religion, can read and write, an office secretary, controller's assistant "at the Rostov divisional office of the Bank of the State. Having "seen the photograph which you exhibited to me (Simeon Grin's "photograph was exhibited), I declare to you that I saw that man on "Tuesday, 6 March, when he received 25,000 roubles on presentation of a cheque. I did not notice whether he was accompanied "by anybody else. He was in a hurry, and said among other "things, 'Oh, how long you detain people.'

"THEODOR FOLLENDORF.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

83 "*Official Report of an Inspection by Experts.*

"On the 9 March, 1901, Rostov on the Don.—The examining "magistrate appointed for the 4 ward of Rostov, on his arrival to "the Rostov divisional office of the Bank of the State, invited, as experts in comparing handwritings, Alexander Yakovlev Filippov, "the assistant of the savings bank's accountant, who warrants payments on the ground of identity of signatures on cheques, and "Nicholar Petrovitch Katranov, another accountant's assistant, "whose duty consists in verifying the authenticity of cheque signatures, reminding them of the tenor of art. 443 of the Code of "Criminal Procedure, offered them, as samples of Simeon Ivanov "Grin's indubitable handwriting, manuscripts with his signature, "found in his apartment, and the book of housekeeping where he "made entries, and having exhibited to the experts a cheque of the "St. Petersburg private commercial bank from the 6 March, sub "N. 544,714, for the sum of 25,000 R., bearing S. Grin's signature "at the back side: 'I acknowledge the receipt of twenty-five thousand roubles, S. Grin:' invited hereafter the experts to explain, "after comparing said documents, whether said receipt on the "cheque's back side was written in the hand of Simeon Ivanov "Grin, and the experts declared that after a minute comparison of "the handwriting on said documents, they had come to the certain "conclusion, grounded on a resemblance of the handwriting's general character and the way of tracing separate letters, that the signature on the cheque's back side belonged to Simeon Ivanov Grin.

"NICHOLAS KATRANOV.

"ALEXANDER FILIPPOV.

"The examiner, OKLADNYKH.

"A true copy:

"The examiner, OKLADNYKH

84 "Copy.

"*Protocol.*

"Rostov on the Don, the 19 July, 1901—The examining magis-
"trate appointed for the 4 ward of Rostov, in the circuit of the Tag-
"anrog circuit court, heard the named underneath in the capacity of
"the injured parties, conformably to the articles 307, 443 of the Code
"of Criminal Procedure, and they declared what follows:

"STEPHEN YEGOROVITCH (GEORGIWITCH or GRIGORIEWITCH)
"ZEEFO, aged 37, a British subject, can read and write, of the ortho-
"dox religion, resiant on the Great Sadovaya, in Rostov on the Don,
"h. N. 112, a temporary merchant of Rostov on the Don. The
"head of our firm, 'E. L. Zeefo,' my father George Zeefo, has his
"usual residence in London. I am the firm's representative in Ros-
"tov and conduct business by virtue of a procuration of my father's.
"I lodge an information against my former clerk, a Cossack of the
"prov. Poltava, Simeon Ivanov Grin, aged 21, and demand that
"criminal proceedings shall be instituted against him for the em-
"bezzlement of 25,000 roubles belonging to me. I declare a civil
"action in the same sum and make the requisition that Grin and
"the money spoliated by him shall be searched for. On the 6 March,
"I gave order to our accountant Dmitri Apalira to make a transfer
"of 25,000 roubles, through the administration of the Wladikavkaz
"railway, to Novorossiesk, putting that sum to the disposal of Mr.
"Sarcenti, the representative of our firm, trading in corn ex-
"port in Novorossiesk. I did not enter into the particulars of
"said order, and Apaliro intrusted Grin with the delivery of the
"money, who had more than once received such commissions
85 "before. The fact that Grin had received 25,000 roubles
"from the Bank of the State, without duly delivering them
"to the administration of the Wladikavkaz railway, I ascertained
"but next morning, 7 March, having received personal information
"thereof in the Bank of the State and in the administration. Simeon
"Grin had been our hired clerk for 8 years, and it was his duty to
"execute orders he received from the office. No written contract
"had been passed with him. Of late his monthly wages were 45
"roubles and a lodging, which retribution must be considered a
"satisfactory one for a young man without education. However, it
"was known to me that long ago Simeon Grin had begun to study
"the German language and dreamed of going abroad. He had no
"livelyhood except his wages.

"STEPHEN YEGOROVITCH ZEEFO.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

"ANDREW YEGOROVITCH ZEEFO, aged 32, of the orthodox religion,
"can read and write, a British subject, resiant in Rostov, Great
"Sadovaya, street, h. N. 112. It is known to me that Apaliro pro-

"ceeded to effectuate a transfer of 25,000 roubles through the ad-
"ministration of the Wladikavkaz railway, obeying a direction of
"my brother Stephen, and that it happened before to intrust con-
"siderable sums *fo* Simeon Grin, who was to deliver them to the
"given address, but that occurred seldom. It is our firm that suffers
"the loss of 25,000 roubles, because said firm has already paid out
"those 25,000 R. to the St. Petersburg private commercial bank, of
"which we had borrowed them on the 6 March. My brother
86 "Stephen is in possession of an unlimited procuration and
"power of trust from my father, and by virtue of said deed I
"have a procuration from my brother; therefore the first declara-
"tion about the offence was issued in my name.

"A. Y. ZEEFO.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

"*Protocol.*

"Rostov on the Don, 19 July, 1901.—The examining magistrate
"appointed for the 4 ward of Rostov, in the circuit of the Tag-
"anrog circuit court, heard the named underneath as a witness,
"conformably to the art. 443 of the Code of Criminal Procedure, and
"he declared what follows:

"ARTHUR MAGNUSOV OTTENS, aged 32, a Lutheran, can read and
"write, am a merchant of Rostov, resiant on the Staropotchtovaya,
"street, h. Kamlivhin, 4 ward of Rostov. I am the manager of the
"Rostov divisional office of the St. Petersburg private commercial
"bank. I exhibit to you an array of commercial letters, and in the
"number 2 commercial letters under date of the 6 March 1901, ad-
"dressed by the firm 'George L. Zeefo and Co.' to our bank, and un-
"dersigned by Stephen Zeefo, on trust of E. Zeefo. In one of the
"letters S. Zeefo asks to pay to D. Apaliro the sum of 18,000 roubles
"on account of the looked-for conossamenti; in the second letter he
"asks that a sum about 7000 roubles should be paid by virtue of
"already existing conossamenti. According to these declarations,
"our bank paid out on the same 6 March last that sum of 25,000
"roubles, in form of a cheque sub N. 544,714 payable from a special
"running account of the Bank of the State to the bearers of
87 "said declaration. D. Apaliro and the clerk, S. I. Grin,
"attending him, and the latter acknowledged receipt of the
"above-mentioned 25,000 roubles. I produce to you the cash order
"N. 25914 u. d. of the 6 March 1901 about the delivery of 25,000
"roubles to E. Zeefo and Co. on account of expected and received
"conossamenti. The back of said order bears S. I. Grin's signature:
"'I acknowledge receipt of twenty-five thousand roubles on trust of
"Messrs. Zeefo and Co. S. I. Grin.' I produce to you the duplicate
"of the cheque book of the Bank of the State. It appears from it
"that on the 6 March 1901 the sum of 25,000 roubles has been paid
"out on presentation of the cheque N. 544,714. I produce to you

"likewise the cash account for the 6 March 1901. In the column "'Credit, accounts of correspondents,' you see the next following "entry, "To E. Zeefo and Co. on account of expected and furnished "conossamenti, 25,000 roubles.'

"ARTHUR MAGNUSOVITCH OTTENS,
"*A Merchant of Rostov.*

"The examiner, OKLADNYKH.

"A true copy:

"The examiner, OKLADNYKH.

88 "Copy.

"*Protocol.*

"Rostov on the Don, the 19 July 1901.—The examining magis- "trate appointed for the 4 ward of Rostov, in the circuit of the "Taganrog circuit court, has heard the named underneath as a wit- "ness, conformably to the art. 443 of the Code of Criminal Procedure, "and he declared what follows:

"MICHAEL GEORGIEVITCH SOLONOV, aged 35, a nobleman, of the "orthodox religion, can read and write, resiant in Rostov, on the "small Sadovaya, street, h. N. 109. I am employed as accountant's "assistant in the chief book-keeping office of the administration of "the Wladikavkaz railroad. Among other things, it is my duty to "keep accounts of the sums received by the cash office from private "persons to the end of transferring said sums to Novorosseesk. So, "for instance, the transfer of any sum by the office of Zeefo through "the administration of the Wladikavkaz railway to Novorosseesk "could not have been effectuated without my knowledge. Simeon "Grin's photograph being exhibited to me by you, I declare that "Grin is not known to me; having inspected the cash book and the "array of duplicate quits, on which are obligatorily entered all "transfers effectuated by private persons through the administration, "I affirm that in the course of March last no sum of 25,000 roubles "has been paid out in Zeefo's name, in order to be transferred to "Novorosseesk. Transfers of sums had been effectuated by Zeefo's "office through the administration of the Wladikavkaz railway "heretofore, but the money used to be delivered by other clerks of "Zeefo, *e. g.* by Kalliga.

"The hereditary nobleman, MICHAEL SOLONOV.

89 "The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

"Copy.

"*Protocol.*

"Rostov on the Don, the 23 July 1901.—The examining magis-
"trate for the 4 ward of Rostov, in the circuit of the Taganrog cir-
"cuit court, heard the named underneath in the capacity of the party
"grieved, conformably to the art. 307 and 443 of the Code of Crim-
"inal Procedure, and he declared what follows:

"STEPHEN YEGOROVITCH ZEEFO. Having seen the 6 photographs
"sent from Japan, which you exhibited to me, I testify that they
"represent the Cossack Simeon Ivanov Grin, who absconded with
"25,000 roubles belonging to me. Having seen the 6 letters from
"Wladivostok, Japan and San Francisco, which you exhibited to
"me, I declare to you that said letters are written in the hand of
"Simeon Grin.

"STEPHEN E. ZEEFO.

"The examining magistrate, OKLADNYKH.

"A true copy.

"The examining magistrate, OKLADNYKH.

90 "Copy.

"*Protocol.*

"Rostov on the Don, 23 July 1901.—The examining magistrate
"for the 4 ward of Rostov, in the circuit of the Taganrog circuit
"court, heard the named underneath as a witness, conformably to
"the art. 443 of the Code of Criminal Procedure, and he deposed as
"follows:

"MARK DMITRIEV MAVRAKI, aged 27, of the orthodox religion,
"can read and write, a Turkish subject, resiant on the Great
"Sadovaya street, h. N. 112. You exhibit to me 6 photographs
"under bandrole, stamped Yokohama, and 6 letters, bearing on
"their envelopes the address of John Petrovitch Grin, Oposhnia.
"I testify that said photographs represent the Cossack Simeon Ivanov
"Grin, who embezzled 25,000 roubles, and that the address on
"said envelopes are written in the hand of Simeon Grin who was
"at Zeefo's service with me (the material proofs have been exhibited).

"MARK D. MAVRAKI.

"The examining magistrate, OKLADNYKH.

"A true copy:

"The examining magistrate, OKLADNYKH.

"Translation warranted conformable to the original.

"M. BUDAGOW,
"*Collegiate Assessor.*"

"No. 8692. Vu pour legalisation de la signature au deuxieme
"departement du Ministere Imperial des Affaires Etrangeres.
"St. Petersbourg, le 31 Aout. 1901.

"Vice-Directeur, S. GOREINOF.
"General d'affaires, BARON TAUBE."

91 "EMBASSY OF THE UNITED STATES OF AMERICA,
"ST. PETERSBURG, *September* 4–17, 1901.

"I, Charlemagne Tower, ambassador extraordinary and plenipo-
"tentiary of the United States of America to Russia, hereby certify
"that the annexed papers, intended to be used in an application
"about to be made by the government of Russia for the extradition
"from the United States of America of Simeon Ivanow Grin, charged
"with the crime of embezzlement, alleged to have been committed
"within the Empire of Russia, as set forth in the annexed papers,
"are properly and legally authenticated so as to entitle them to be
"received and admitted as evidence for similar purposes by the tri-
"bunals of Russia, as required by the act of Congress of August 3rd,
"1882.

"[Seal of the Embassy of the U. S. of America, St. Petersburg.]

"CHARLEMAGNE TOWER,
"*United States Ambassador.*"

92 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

Ex Parte SIMEON I. GRIN, on *Habeas Corpus.*

Appeal and Allowance Thereof.

In the above-entitled matter, the therein-named Simeon I. Grin conceiving himself aggrieved by the order and judgment of the circuit court of the United States in and for the ninth judicial circuit, northern district of California, entered on the 18th day of December A. D. 1901, in said matter, discharging the writ of *habeas corpus* therein and remanding the said Simeon I. Grin, doth hereby appeal from said order and judgment to the Supreme Court of the United States, and he prays that this his appeal be allowed in accordance with law and that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, be sent to the Supreme Court of the United States upon this appeal.

GEORGE D. COLLINS,
Attorney for said Appellant, Simeon I. Grin.

San Francisco, December 24th, A. D. 1901.

And now, to wit: on December 24th A. D. 1901, it is ordered that the foregoing appeal be allowed as prayed for, and that a supersedeas upon the order and judgment in said appeal mentioned, be and the same is hereby granted.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed December 24, 1901. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

93 In the Supreme Court of the United States of America.

SIMEON I. GRIN, Appellant,
vs.
JOHN H. SHINE, Respondent.

Assignment of Errors.

Of October term, in the year of our Lord one thousand nine hundred and one.

Afterwards to wit: on the 24th day of December A. D. 1901, in the same term, before the justices of the Supreme Court of the United States of America, comes the said Simeon I. Grin, by Mr. George D. Collins his counsel, and says that in the record and proceedings in the above-entitled matter there is manifest error in this to wit:

1. That the circuit court of the United States in and for the northern district of California committed manifest error in deciding that the United States commissioner possessed jurisdiction to hear the proceedings in the matter of the extradition of the said Simeon I. Grin.

2. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the United States commissioner possessed jurisdiction to adjudicate upon the matter of the extradition of the said Simeon I. Grin.

3. That the said circuit court of the United States in and for the northern district of California committed manifest error in
94 deciding that the United States commissioner possessed the power and jurisdiction to issue the warrant of commitment in the matter of the extradition of the said Simeon I. Grin.

4. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the warrant of arrest issued by the United States district judge, is valid and not void.

5. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the United States district judge possessed the power and jurisdiction to make the warrant of arrest and the proceedings thereon returnable before the United States commissioner.

6. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the complaint in the matter of said extradition proceedings conferred jurisdiction on the United States commissioner to hear and determine said proceedings.

7. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the complaint in said extradition proceedings conferred jurisdiction on the United States district judge to issue a warrant of arrest in said proceedings.

8. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding

that the complaint in said extradition proceedings charges the defendant with the crime of embezzlement according to the laws of the State of California.

95 9. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that there is evidence that defendant committed the crime of embezzlement in the Empire of Russia.

10. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the papers in the matter of said extradition are authenticated as required by law.

11. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the certificate of the United States minister to Russia, which appears attached to said papers, is in accordance with the requirements of the act of Congress of 1882.

12. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the certificate last mentioned is valid and according to law.

13. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the said Simeon I. Grin is not illegally imprisoned and restrained of his liberty, in contravention of the Constitution of the United States to wit: the fifth amendment thereof, and in contravention of the extradition treaty between the United States and the Empire of Russia.

14. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that John H. Shine, United States marshal for the northern

96 district of California does lawfully hold and detain in his custody said Simeon I. Grin.

15. That the said circuit court of the United States in and for the northern district of California committed manifest error in deciding that the said Simeon I. Grin is not entitled to be discharged from the custody of the said John H. Shine, United States marshal, for the northern district of California.

17. That the said circuit court of the United States in and for the northern district of California committed manifest error in denying to said Simeon I. Grin restoration to his liberty upon said writ of *habeas corpus*.

18. That the said Simeon I. Grin is deprived of his liberty without due process of law.

Wherefore the said Simeon I. Grin prays that the order and judgment of the said circuit court of the United States, ninth judicial circuit, northern district of California be reversed, annulled and altogether held for naught, and that he be restored to all things which he hath lost by reason of the said judgment; and that an order be made directing the discharge from imprisonment of the said Simeon I. Grin.

GEORGE D. COLLINS,
Attorney for Appellant, Simeon I. Grin.

(Endorsed:) Filed December 24, 1901, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

97 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

SIMEON I. GRIN, Appellant,
vs.
JOHN H. SHINE, Respondent.

Bond on Appeal.

Know all men by these presents that we George D. Collins and Alfred Schmulian, both of the city and county of San Francisco, State of California, are held and firmly bound unto the above-named John H. Shine, in the sum of two hundred (200) dollars to be paid to the said John H. Shine for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated the 24th day of December in the year of our Lord one thousand nine hundred and one.

Whereas the above-named Simeon I. Grin has prosecuted an appeal to the Supreme Court of the United States to reverse the order and judgment rendered in the matter of *Ex parte* Simeon I. Grin on *habeas corpus*, in the said circuit court of the United States for the northern district of California,

Now therefore, the condition of this obligation is such that if the above-named Simeon I. Grin shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal
98 good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEO. D. COLLINS. [SEAL.]
ALFRED SCHMULIAN. [SEAL.]

Sealed and delivered and taken and acknowledged this 24th day of December A. D. 1901 before me.

ADELINE COPELAND, [SEAL.]
Notary Public in and for the City and County of San Francisco, State of California, 28 Crocker Building.

Approved by:
WM. W. MORROW,
Circuit Judge.

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } *ss:*

George D. Collins and Alfred Schmulian being duly sworn deposes and says each for himself that he is one of the sureties on the foregoing bond; that he is worth the sum of two hundred dollars

over and above all his debts and liabilities, exclusive of property exempt from execution. That he is a resident of the said city and county of San Francisco, in the State of California.

GEO. D. COLLINS.
ALFRED SCHMULIAN.

Subscribed and sworn to before me this 24th day of December A. D. 1901.

ADELINE COPELAND, [SEAL.]
Notary Public in and for the City and County of San Francisco, State of California, 28 Crocker Building.

(Endorsed:) Filed December 24, 1901, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

99 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

CLERK'S OFFICE.

In the Matter of SIMEON IVANOW GRIN, on *Habeas Corpus*. No. 13180. Præcipe.

To the clerk of said court.

SIR: Please prepare and transmit to the United States Supreme Court, as the record on appeal in the above-entitled matter, a certified transcript of the following records and proceedings, viz:

1. Judgment-roll.
2. The following from the record of U. S. district court, and U. S. commissioner, E. H. Heacock, Esq., read in evidence on the hearing of this matter viz: *a*. Mandate of Secretary of State; *b*. Order U. S. district court appointing commissioner; *c*. That portion of record of U. S. commissioner comprising translations from Russian documents, and orders of Russian magistrate with certificate of U. S. ambassador to Russia annexed, found on pages 66 to 91 of "Russian record," as translated.
3. Appeal and allowance thereof.
4. Assignment of errors.
5. Bond on appeal.
6. Præcipe for transcript on appeal.

GEO. D. COLLINS,
Attorney for Appellant.

Dec. 27, 1901.

(Endorsed:) Filed December 27th, 1901. Southard Hoffman, clerk.

100 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of SIMEON I. GRIN, on *Habeas Corpus*. No. 13180.

Certificate to Record on Appeal.

I, Southard Hoffman, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing pages, numbered from 1 to 99, inclusive, to be a full, true and correct copy of the judgment-roll in the above-entitled matter, made and filed December 18, 1901; the mandate of the Secretary of State of the United States read in evidence upon the hearing of said matter; the order of the United States district court appointing commissioner, read in evidence upon the hearing of said matter; that portion of the record of United States Commissioner E. H. Heacock Esq., comprising translations from the Russian language of Russian documents and orders of Russian magistrate, with certificate of United States ambassador to Russia, annexed, found on pages 66 to 91 of "Russian record" as translated, and which was read in evidence upon the hearing of the said matter; the appeal and allowance thereof, filed December 24, 1901; the assignment of errors, filed December 24, 1901; the appeal bond filed December 24, 1901, and the præcipe for transcript on appeal, filed December 27, 1901, in the above-entitled matter, and that the same together constitute the transcript of the record upon

101 appeal of said Simeon Ivanow Grin, to the Supreme Court of the United States herein, as directed to be prepared by the attorney for said Simeon Ivanow Grin; (a copy of his præcipe being hereto annexed).

And I further certify that the original citation, and a copy of the opinion of the court in said matter, are annexed hereto; that the cost of said transcript on appeal is $55.80, and that the said sum was paid by George D. Collins, attorney for petitioner.

Seal U. S. Circuit Court, Northern Dist. Cal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this 17th day of January, A. D. 1902.

SOUTHARD HOFFMAN,
Clerk of the United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

102 *Citation on Appeal.*

UNITED STATES OF AMERICA, *Northern District of California,* } ss:

The President of the United States of America to John H. Shine, United States marshal for the northern district of California, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the 21st day of February A. D. 1902,

pursuant to an appeal filed in the clerk's office of the circuit court of the United States, ninth judicial circuit, northern district of California, wherein Simeon I. Grin is the appellant and you, the said John H. Shine are the respondent, to show cause if any there be, why the judgment of the said circuit court of the United States, in the matter of *Ex parte* Simeon I. Grin on *habeas corpus*, mentioned in the said appeal, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 24th day of December in the year of our Lord one thousand nine hundred and one.

WM. W. MORROW,
Circuit Judge.

Service of the foregoing citation and receipt of a copy thereof, on this 24th day of December A. D. 1901, is hereby acknowledged.

JOHN H. SHINE,
United States Marshal for the Northern District of California.

103 [Endorsed:] United States circuit court, ninth judicial circuit, northern district of California. Simeon I. Grin, appellant, *vs.* John H. Shine, respondent. Citation on appeal. Filed December 24, 1901. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk. George D. Collins, 21–22 Crocker bldg., San Francisco, Cal., attorney for appellant.

104 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Petition of SIMEON IVANOW GRIN for Writs of *Habeas Corpus* and Certiorari. No. 13180.

Opinion.

George D. Collins, attorney for petitioner.

Horace G. Platt, attorney for Paul Kosakevitch, Russian imperial consul at San Francisco, acting for and on behalf of the demanding government herein, the Empire of Russia.

MORROW, *Circuit Judge:*

Extradition proceedings for the surrender of the petitioner herein were instituted on behalf of the Empire of Russia, under the provisions of the treaty of 1893 between the United States and Russia, charging the petitioner with the crime of embezzlement, committed under the following circumstances:

On the 6th day of March, 1901, Simeon Ivanow Grin, a Russian subject, was residing in the city of Rostov on the Don, in the Empire of Russia, and was in the employ of the representatives of the firm of E. L. Zeefo & Company, an export corn-trading concern doing business in that city. On that day Grin was entrusted with
105 the sum of 25,000 roubles in Russian money, in his capacity as clerk, by one of said representatives of the firm of Zeefo &

Company, and instructed to deliver the said money to the administration of the Vladikavkaz railroad in said city. Grin did not deliver the money as directed, but appropriated the whole amount to his own use, and immediately absconded from the Empire of Russia to the United States locating in the city and county of San Francisco, State of California.

On October 8, 1901, the mandate of the Secretary of State of the United States was issued to the officers given jurisdiction of extradition proceedings under section 5270 of the Revised Statutes, directing the arrest of Grin upon the charge of embezzlement, and that a warrant should issue for his surrender to the Empire of Russia, pursuant to treaty stipulations between that country and the United States, if upon the proper proceedings sufficient evidence of his guilt was produced. This mandate was presented to the United States district judge for the northern district of California on October 16, 1901, together with the complaint of the Russian imperial consul stationed at San Francisco. The said judge thereupon issued a warrant for the apprehension of said Grin, in accordance with the terms of said mandate, ordering Grin to be brought before the said court. This warrant was directed to the United States marshal for the northern district of California. The prisoner was not found within that jurisdiction, and on October 17, 1901, a second warrant was issued by said district judge for the apprehension of the said Grin, directed to the United States marshal of any district of California. This warrant provided for the bringing of the prisoner before Hon. E. H. Heacock, a commissioner of said court. On the same day a special order was made by said court authorizing the said commissioner to discharge all the duties
106 and exercise all the powers which may be performed by a justice of the Supreme Court, a circuit or district judge, under section 5270 of the Revised Statutes. The prisoner was arrested under this warrant, in the southern district of California, and brought before the said commissioner, when the usual proceedings were had. On November 23, 1901, the said commissioner certified to the Secretary of State the record of such proceedings; also, that he deemed the evidence produced sufficient to sustain the charge in the said complaint under the provisions of the extradition treaty and convention between the United States and Russia, and that he had therefore issued his warrant for the commitment of the said Grin to the custody of the United States marshal until proper orders were received from the President of the United States for his surrender to the proper officers of the Russian government.

The said Grin thereupon petitioned this court for a writ of *habeas corpus*, and for a writ of certiorari to the said commissioner, requiring him to certify to this court the record, proceedings, and evidence, and his authority by virtue of which he assumed to issue and did issue a warrant of commitment against the petitioner. The petition was granted, the writs issued and obeyed, and the matter has been fully submitted to the court.

The petitioner alleges a want of jurisdiction in the commissioner to act herein, and sets forth certain alleged technical defects in the

extradition papers. He contends that if guilty at all, it is of the crime of larceny and not embezzlement, as charged: and that for these reasons he should be discharged.

The contention of want of jurisdiction in the commissioner to hear and determine this case is based upon the fact that the complaint was not presented to the commissioner and the warrant of arrest was not issued by him, and it is urged that in issuing
107 the warrant and making the same returnable before the commissioner, the district judge exceeded his power.

Section 5270 of the Revised Statutes of the United States provides:

"Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, district, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."

The statute does not declare in mandatory terms that any special method of procedure shall be pursued after the issuance of the warrant upon the complaint; it merely designates the officers to whom the complaint may be presented and who may hear and determine the sufficiency of the evidence to sustain the charge, under the provisions of the treaty or convention. The treaty provides specially that the surrender of criminals from either country to the other, "upon mutual requisitions and according to their respective regulations and procedure," "shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed." It is clear that
neither the statute nor the treaty intended that other
108 than the usual method of procedure in the preliminary examinations of criminal charges should be followed. The complaint in this case was presented to the United States district judge, who then issued a warrant returnable before him. The fugitive was not found within his district, but was located in the south-

ern district of the State. A second warrant for his arrest was then issued by the same judge, but made returnable before the commissioner, presumably for the convenience of the business of the court and the expedition of the matter in question.

The United States district court for each judicial district is authorized by law "to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court, which United States commissioners shall have the same powers and perform the same duties as are now imposed upon commissioners of the circuit courts." Section 19 of the act of May 28, 1896, 29 Stats. at Large, 184.

Section 627 of the Revised Statutes, which was then in force, provided that each circuit court "may appoint, in different parts of the district for which it is held, so many discreet persons as it may deem necessary, who shall be called 'commissioners of the circuit courts,' and shall exercise the powers which are or may be expressly conferred by law upon commissioners of circuit courts."

By section 727 of the Revised Statutes commissioners of the circuit courts were vested with authority "to hold to security of the peace and for good behaviour in cases arising under the Con-
109 stitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them."

By section 1014 commissioners of the circuit court were vested with the power to arrest, imprison, or bail offenders for any crime against the United States, agreeably to the usual mode of process against offenders in such State; that is, the State wherein the offender may be found.

The powers here given to commissioners of the circuit court and which have been succeeded to by the commissioners of the district court, practically comprehend all preliminary examinations in criminal cases, the commissioner acting as an arresting, examining, and committing magistrate under the jurisdiction of the United States district court.

In United States *v.* Berry, 4 Fed. 779, 780, the court had occasion to consider the relation of the commissioner to the court in the performance of his official duties as an examining magistrate. The court said:

"It is plain that commissioners are but officers of the court, to whom are committed some of the duties which must otherwise be performed by the court itself, or the judge thereof. The exigencies of the public service demand that speedy inquiry shall be made into all criminal charges, in order that offenders may be brought to justice; and as, from the press of business or remoteness from the place where the crime may be committed, or other cause, the court cannot always, or ordinarily, perform that service, commissioners are appointed to facilitate the business. In all that they do they are not separate and independent tribunals, but the arms of the court to execute the preliminary work of securing the presence of offenders at the time appointed for arraignment and trial."

This was said with respect to proceedings against persons accused

of offenses under the laws of the United States, but this
110 statement of the relation of the commissioner to the court is even more applicable to proceedings relating to the extradition of fugitives from justice under section 5270 of the Revised Statutes. This section gives jurisdiction to certain judicial officers of the United States and State to hear and consider the evidence in extradition proceedings, and among the officers so mentioned are commissioners "authorized so to do by any of the courts of the United States." This power to hear and consider the evidence constitutes jurisdiction to determine the sufficiency of the evidence and to make the certificate therein provided. Grignon's Lessee *v.* Astor, 2 How. 338. This jurisdiction is not impaired by the manner in which the accused is brought before the commissioner. Mahon *v.* Justice, 127 U. S. 700, 708; *Ex parte* Ah Men, 77 Cal. 202; People *v.* Pratt, 78 Cal. 345; *In re* Miles, 52 Vermont, 609.

In the case of *In re* Henrich, 5 Blatchford, 414, 11 Fed. Cas. 1143, case No. 6369, a warrant was issued by Mr. Justice Nelson of the Supreme Court of the United States and the presiding judge of the circuit court for the southern district of New York, directed to the marshals of the United States in any district or to any of their deputies, commanding them to arrest Henrich forthwith and bring him before the said justice or before Commissioner White, at the city of New York, or some other magistrate, that the evidence of the criminality of said Henrich might be heard and considered pursuant to the treaty stipulations and the acts of Congress in such case made and provided. Henrich was arrested in Wisconsin by a special deputy of the marshal of the southern district of New York, and was brought before Commissioner White at the city of New York for examination. After hearing the evidence, the commissioner adjudged it sufficient
111 to sustain the charge and committed the accused to the custody of the marshal to be kept in custody until he should be surrendered by the executive authority of the United States under the provisions of the treaty. An application was thereupon made to the United States circuit court for the southern district of New York for a writ of *habeas corpus* to review the proceedings before the commissioner. The writ was issued to the marshal to bring the accused before the court, and a writ of certiorari was also issued to the commissioner to send up all the papers and proofs upon which he acted in the premises. The court reviewed the entire proceedings, and while the precise question as to the jurisdiction of the commissioner urged in this case does not appear to have been raised in that case, nevertheless it was involved in the proceedings and could hardly have escaped the attention of the court. If the jurisdiction of the commissioner to hear the case depended upon the fact that the warrant of arrest must have been issued by him, then he had no jurisdiction in that case, since the warrant of arrest was not issued by him but by a justice of the Supreme Court of the United States. A district judge has the same power and authority under the statute as a justice of the Supreme Court of the United States, and if the latter has the power and authority under the

statute to issue a warrant of arrest in extradition proceedings returnable before a commissioner, so has the former. In any event, the jurisdiction of the commissioner to hear and consider the evidence in this case, and make the certificate provided by law, is not dependent upon the fact that he issued the warrant of arrest in obedience to which the accused was brought before him for examination.

The petitioner objects to the sufficiency of the various documents upon which these proceedings are based, in the following par-
112 ticulars:

1. That the complaint charges no embezzlement, in that it does not charge that the accused *fraudulently* appropriated the property; also, that the averment that the defendant received the money "in his capacity as clerk" is not the equivalent of the statutory requirement that the money be in his control or care "by virtue of his employment."

2. That the complaint is defective in that it does not affirmatively appear that the oath was taken before an officer specially authorized by section 5270 of the Revised Statutes.

3. There is no evidence of authority to make the complaint on the part of the Russian consul.

4. No authenticated copy of a warrant of arrest by a duly authorized judge or magistrate is contained in the record, and the papers generally, aside from the depositions, are not authenticated.

5. No indictment appears in the record.

6. The certificate is defective, in that it does not identify the papers to which it relates, and is not in accordance with the requirements of the act of 1882 that the papers "shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped." The fatal defect claimed is that the certificate states that the papers are so authenticated as to entitle them to be received and admitted *as evidence* for similar purposes by the tribunals of Russia.

7. That the mandate is a nullity, as it does not in terms designate the kind of embezzlement charged, so as to show it to be within the treaty.

113 While these objections will be given due consideration, it may be remarked at the outset that it is not the policy of the courts at this day to allow mere technical objections as to form, etc., to interfere with the prosecution of criminals, where a substantial conformity with the requirements of the statute is shown. This policy is well expressed in the case of *In re* Neely, 103 Fed. 626, where, in extradition proceedings various technical objections were urged to the sufficiency in form of the documents presented. The court said:

"Objections of this class are not given the weight once accorded to them when the granting of a request for extradition was more jealously regarded by the courts than it is today. Originally it seemed to be the theory that the sole foundation of the practice rested in reciprocity; and that, if some particular foreign country were back-

ward about returning our criminals, we would be keen to keep theirs During this period courts were astute to find flaws in certificates jurats, seals, and signatures as an excuse for refusing the request of some demanding government. At last, however, it seems to have been discovered that the thief, the ruffian, or the forger was not a particularly valuable acquisition; and that, although it might be highly desirable that offenders against our laws should be brought back here and tried, as a deterrent example, it was possibly more important that this country should not be made a city of refuge for foreign criminals, and that an enlightened public policy would be astute to return them, once we were satisfied that they were criminals. The expression of this public policy is found in the provisions of the act of Congress which excludes convicted criminals whose offenses are not political, with those afflicted with contagious diseases and such as are liable to become a public charge. Since then there has not been so much hypercriticism in dealing with objections as to form, and if the certificates, signatures, etc., are in substantial conformity to the requirements of the statute, and give reasonable assurance of authenticity, it is sufficient."

Considering the objections seriatim:

(1.) The complaint charges the said Grin with wrongfully, unlawfully and feloniously appropriating and converting to his own use the money of his employer which had been entrusted to him, and that he "embezzled the same." The word "embezzle" is defined, "to appropriate or divert *fraudulently* to one's own use, as money or goods entrusted to one's care and control officially or by another." (Standard Dictionary.) The charge thus contains the elements necessary to constitute embezzlement, namely, a breach of trust in respect of money or property in the party's possession, belonging to another, and the wrongful or fraudulent appropriation thereof to his own use. (Reeves *v.* State, 95 Ala. 31.) And that the word "embezzle" has a significant meaning, entirely descriptive of the offense, see U. S. *v.* Lancaster, 2 McLean, 431; Fed. Cas. 15,556; United States *v.* Northway, 120 U. S. 327, 334. It is not absolutely necessary to follow the exact words of the statute in charging an offense, if words of a similar import are used, and the elements necessary to constitute the offense are fully comprehended therein, and inform the accused of the offense with which he is charged. People *v.* Potter, 35 Cal. 110; Johnson *v.* People, 113 Ill. 90; State *v.* Heaton, 81 N. Car. 542; *In re* Roth, 15 Fed. 506; *In re* Adutt, 55 Fed. 376.

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(2.) The complaint is made upon oath, before a United States commissioner, and his seal as such commissioner is attached. Section 5270 R. S. does not specify the officers who may administer the oath upon complaints in extradition proceedings, but merely requires that the warrant for the arrest of the alleged fugitive from justice shall not be issued until after the presentation of a complaint made under oath, charging a crime covered by the extradition treaty. The natural import of such language is that the oath will be sufficient if made before any officer authorized to administer such an oath.

By section 19 of the act of May 28, 1896 (29 Stats. 184) United States commissioners are authorized to administer oaths.

(3.) That the proceedings should be initiated and carried on by the demanding government is undoubted; but that evidence of special authority from such government to the party making the complaint is necessary is a contention that cannot be upheld. The complaint herein contains the positive statement that it is
115 made by the Russian consul stationed at the city of San Francisco; it recites that criminal proceedings upon the charge alleged have been instituted against the said Grin; that a mandate has been issued from the State Department of this Government for his surrender upon proper proceedings; and prays that the necessary proceedings may be had as directed in said mandate. The consular title is appended to the signature of the complaining party, and no presumption can arise from any portion of the complaint that it was made other than as and for the Russian government. The cases of *In re* Herres, 33 Fed. 165, and *In re* Adutt, 55 Fed. 376, rightly hold such a showing in a complaint to be amply sufficient for the purposes of the document.

The fourth, fifth, and sixth objections may be considered together. The treaty provides that "when the person whose surrender asked shall be merely charged with the commission of an extraditable crime or offense, the application for extradition shall be accompanied by an authenticated copy of the warrant of arrest or of some other equivalent judicial document issued by a judge or a magistrate duly authorized to do so." Among the documents contained in the record are two orders signed and sealed by the magistrate of the Taganrog circuit court, both dated the 23d day of July, 1901, at Rostov on the Don. The first one stated that "the acting examining magistrate of the 4th district of the city of Rostov on the Don, having investigated the preliminary examination in regard to the appropriation by the Cossack of the province of Poltava, Simeon Grin, of 25,000 roubles belonging to the Broth. Zeefo, finds as follows." The facts are then stated, at the conclusion of which it is "ordered: to arraign in capacity of accused, pursuant to part 1, article 1681 of the Penal Code, the Cossack of the province of Poltava, bailiwick of Oposhnia, of Popovka, Simeon Ivanov Grin, 21 years of
116 age (born February 19th, 1880), living with a passport issued in the name of a nobleman Valentine Semashko." The second order, after reciting the same preliminary statements, finds that the said Grin "is arraigned, according to order of this date, in capacity of accused, pursuant to part 1, article 1681 of the Penal Code;" that the said Grin, "having committed the crime, being of age, is thus accused of a crime, for which, pursuant to paragraph 1, article 389 of the Code of Criminal Procedure, he may be brought up for examination:" * * * "that in view of the proved fact of embezzlement of a sum over 300 roubles, of the sufficiency of the evidence, as shown in the order of this date in regard to the arraignment of S. Grin, alias V. Semashko, in capacity of the accused, and likewise of the severity of the impending penalty, of the flight, after the crime, of the fact that he has not a settled place of residence, pur-

suant to paragraph 1 of article 416, articles 419, 420, and 421 of the Code of Criminal Procedure, in regard to S. Grin there can be and must be undertaken his detention in custody upon his examination as the accused, ordered: Pursuant to paragraphs 1, 2, 3, of article 389 of the Code of Criminal Procedure, the Cossack Simeon Ivanow Grin, alias Valentine Semashko, is to be brought to the city of Rostov on the Don, in the province of the Don army, in order to be placed at the disposition of the examining magistrate of the Taganrog circuit court of the 4th district of the city of Rostov on the Don." In these orders are contained all the essentials of the warrant of arrest or other judicial document issued by a judge or magistrate required by the treaty. And that the magistrate making the order is a duly authorized official is shown by the certificate of the United States embassador, stating that the annexed papers, in which the
117 above orders are included, "are properly and legally authenticated so as to entitle them to be received and admitted as evidence for similar purposes by the tribunals of Russia, as required by the act of Congress of August 3d, 1882." This certificate is sufficient under the statute, the words "for similar purposes" having been repeatedly construed to mean "as evidence of criminality." *In re* Henrich, Fed. Cas. 6369; *In re* Charleston, 34 Fed. 531. The words "as evidence" in the certificate herein, objected to by counsel for the petitioner, may therefore be regarded as surplusage, and not as constituting a material variation from the terms of the statute.

It is true that no indictment appears in the record, though it is stated in the record that the said Grin has been indicted in the Empire of Russia for the said embezzlement. But, the petitioner having been found within the State of California, the law of this State must control this procedure. No indictment is required by that law, and the omission is therefore immaterial.

(7.) A statement of the offense with which the fugitive is charged in general terms importing that it is an offense within the treaty, is all that is required in the mandate, as it only contemplates a recognition by the executive that the case is one which comes within the scope of the treaty, and calls for judicial investigation. *In re* Kelley, 26 Fed. 852; *In re* Macdonnell, 11 Blatchf. 79.

Coming now to the main objection urged by counsel for the petitioner to the sufficiency of the evidence produced herein to convict the accused of the crime charged. It is contended that the petitioner is guilty, if at all, of the crime of larceny, and not of embezzlement; and as the laws of this State will not permit a
118 trial of the offense of larceny upon the charge of embezzlement, upon the showing made the prisoner cannot be held for embezzlement and should therefore be discharged. This contention is based upon the alleged fact that the money was delivered to the petitioner by his superior to take from the bank to the railway company, and while in the custody of the petitioner, was really in the lawful possession of the employer; that the appropriation thereof by the said Grin was therefore a taking from the possession of his employer, and was larceny.

That was the early rule, when the statutory crime of embezzle-

ment was created to provide for the punishment of those fraudulently converting money or property to their own use which had been entrusted to them. As the element of trespass was wanting, the common-law crime of larceny would not cover the offense, and the offender escaped punishment. The creation of the distinct offense of embezzlement supplied a remedy for this defect in the law, but technical difficulties still frequently arose, owing to the strict construction of the common law of the relationship of master and servant, employer and employé, holding the servant or employé to be merely the extended hand of the master or employer, the possession of the master or employer thereby continuing, even when the custody or control was in the servant or employé, until the interposition of some third party. The line was thus of necessity drawn between the cases where property was entrusted to the servant *by the master* (where the servant was held to have merely the custody but not possession) and where it was entrusted to the servant *by a third party* for or on behalf of the master. In the latter case the possession was held to be in the servant, and a conversion of the property by the servant was embezzlement. To overcome the difficulties still existing, and to meet the necessities of larger commercial
119 relations with the corresponding increase of responsibility upon employés, many States have introduced into their statutes governing embezzlement words indicating that conversion of property merely "in the care or custody" of the employé shall constitute embezzlement, thus taking the crime more definitely and decidedly from the domain of larceny. In California embezzlement is broadly defined as "the fraudulent appropriation of property by a person to whom it has been intrusted." (Sec. 503, Penal Code.) And in sec. 508 of the Penal Code it is provided that "Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control *or care by virtue of his employment* as such clerk, agent, or servant, is guilty of embezzlement."

In People *v.* Gallagher, 100 Cal. 466, the crime of embezzlement was held to cover a case in which the property fraudulently converted had not been in the possession of the prosecutor.

In other States statutes containing similar words to those in the California statute have been construed as extending the crime of embezzlement to circumstances where the property converted had come into the control of the accused from his employers merely by virtue of his employment. In Moore *v.* United States, 160 U. S., 268, the Supreme Court of the United States, upon a writ of error to the U. S. district court for the southern district of Alabama, defines embezzlement as "the fraudulent appropriation of property by a person to whom it has been entrusted, or into whose hands it has lawfully come," and states that "it differs from larceny in the fact that the original taking of the property was lawful, or with
120 the consent of the owner, while, in larceny the felonious intent must have existed at the time of the taking." The court there holds that an indictment charging embezzlement of property

of the government, generally described, without particular identification, would be sufficient if it contained the allegation that the sum embezzled came into the possession of the accused by virtue of his employment.

In Ker *v.* The People, 110 Ill. 627, the English statutes are distinguished from many American statutes in this regard.

And in Territory *v.* Maxwell, 2 New Mexico, 250, the difference between the statutes of States following the early English rule and those of more modern enactment is clearly shown. The New Mexico statute under consideration was almost identical with the California statute, and in construing it the court said:

"There is no limitation as to the manner of the coming to his possession, or under his control, or the person from whom they may so come. This widens the scope of the law very much, and renders the decisions made under the more restrictive language of the older statutes entirely inapplicable. This we could hold from the very nature of the language employed, and the difference obviously made by the omission of the old restrictive clause without the need of any previous adjudication on the subject."

It is undoubtedly a legislative prerogative to define the crime of embezzlement and include within its terms such elements as it deems proper. The four distinct propositions of fact to be made out to convict one of this crime under the California statute have been held to be: (1) That the party was such a clerk, agent, or servant; (2) that he received the property of his principal; (3) that he received it in the course of his employment; (4) that he converted it to his own use, with intent to steal. *Ex parte* Hedley, 31 Cal. 108. These elements were all present in the case at bar, and under the comprehensive wording of the California statute the petitioner could be convicted of the crime of embezzlement upon the proofs submitted.

121 There appearing no substantial error in law and no manifest error in fact in the proceedings before the commissioner, the writ of *habeas corpus* will be dismissed, and the petitioner remanded to the authority of the United States marshal under the commissioner's warrant.

(Endorsed:) Filed Dec. 18, 1901, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

Endorsed on cover: File No. 18,495. N. California C. C. U. S. Term No. 303. Simeon I. Grin, appellant, *vs.* John H. Shine, U. S. marshal for the northern district of California. Filed April 14", 1902.

No. 642.

Motion to advance.

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

SIMEON I. GRIN, APPELLANT,
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MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

SIMEON I. GRIN, APPELLANT,
v.
JOHN H. SHINE, UNITED STATES MARSHAL for the northern district of California. | No. 642.

MOTION TO ADVANCE.

This is an appeal in a habeas corpus proceeding from an order dated December 18, 1901, remanding the appellant herein to the custody of the United States marshal.

The facts in the case are substantially as follows: On March 6, 1901, Simeon Ivanow Grin, a Russian subject, was residing in the city of Rostov, on the Don, in the Empire of Russia, and was in the employ of E. L. Zeefo & Co., an export corn trading concern. On that day Grin was entrusted with the sum of 25,000 rubles in Russian money (equivalent to about $12,500), in his capacity as clerk of one of the representatives of the firm of Zeefo & Co., and instructed to deliver the money to the administration of the Valadikavkaz Railroad in said city. Grin did not deliver the money as directed, but appropriated the whole amount to his own use, and immediately absconded from the Empire of Russia to the United

States, locating in the city and county of San Francisco, Cal. On October 8, 1901, the mandate of the Secretary of State of the United States was issued to the officers given jurisdiction of extradition proceedings under section 5270 of the Revised Statutes, directing the arrest of Grin upon the charge of embezzlement, and that a warrant should issue for his surrender to the Empire of Russia, pursuant to treaty stipulations between that country and the United States, if, upon proper proceedings, sufficient evidence of his guilt was produced. This mandate was presented to the United States district judge for the northern district of California on October 16, 1901, together with the complaint of the Russian imperial consul, Paul Kosakevitch, stationed at San Francisco. The said judge thereupon issued a warrant for the apprehension of Grin in accordance with the terms of the mandate, ordering him to be brought before said court. This warrant was directed to the United States marshal for the northern district of California. The prisoner was not found within that jurisdiction, and on October 17, a second warrant was issued by the district judge for the apprehension of Grin, directed to the United States marshal in any district of California. This warrant provided for the bringing of Grin before E. H. Heacock, United States commissioner for the northern district of California. On the same date a special order was made by said court authorizing said commissioner to discharge all the duties and exercise all the powers, etc., under section 5270 of the Revised Statutes. The prisoner was arrested under this warrant in the south-

ern district of California, and brought before the commissioner, and the usual proceedings had. On November 23, 1901, the commissioner certified to the Secretary of State the record of such proceedings, and that he deemed the evidence produced sufficient to sustain the charge under the provisions of the extradition treaty between the United States and Russia, and that he had therefore issued his warrant for the commitment of said Grin to the custody of the United States marshal until orders were received from the President of the United States for his surrender to the proper officers of the Russian Government.

On November 20, 1901, a petition for a writ of habeas corpus was filed by Grin in the circuit court of the United States for the northern district of California. Therein the petitioner alleged want of jurisdiction in the commissioner to act, and set forth certain alleged technical defects in the extradition papers, contending that, if guilty at all, it was of the crime of larceny and not of embezzlement, and that therefore his imprisonment was unlawful and in violation of the constitution and laws of the United States and in particular of the fifth amendment to the Constitution of the United States and sections 5270 and 5271 of the Revised Statutes.

Upon the filing of the petition and the issuance of the writ, the Russian imperial consul, Paul Kosakevitch, was permitted to intervene in the cause and made answer to the petition, denying the material allegations therein. Upon hearing, the petition was dismissed, the writ of habeas corpus discharged, and

the petitioner remanded to the custody of the United States marshal.

This case was decided by the circuit court on December 18. The record is not voluminous. The certificate of the clerk of the court, Southard Hoffman, to the transcript is dated January 17, 1902. The citation is made returnable February 21. Sent up with the transcript of the record was an order signed by Judge Morrow enlarging the time for filing the record and docketing the case "twenty days from this the 21st day of February, A. D. 1902." The case was docketed in this court April 14.

It is evident that the appeal has been taken to this court mainly, if not solely, for the purpose of delay. Following is a copy of a letter from the Secretary of State in which, on the solicitation of the Russian ambassador, he requests that steps be taken for the advancement of the case and its speedy disposition.

DEPARTMENT OF STATE,
Washington, April 23, 1902.

The honorable the ATTORNEY-GENERAL.

SIR: Referring to the case of the Russian subject, Simeon I. Grin, now pending before the Supreme Court of the United States, I have the honor to request, at the instance of the Russian ambassador at this capital, that you will ask the court to advance the case so that it may be heard at the earliest practicable date—if possible, at the present term of the court.

I have the honor to be, sir, your obedient servant,

JOHN HAY.

For the above reasons the Solicitor-General moves the court to advance the case upon the docket for hearing at the earliest day practicable.

Notice of this motion has been served upon opposing counsel, and proof of service of such notice filed with the clerk of this court.

JOHN K. RICHARDS,
Solicitor-General.

APRIL 23, 1902.

No. 303. ORIGINAL.

Office Supreme Court U.S.
FILED
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No. 303.

Brief of Collins for

IN THE

Filed Nov. 15, 1902.

Supreme Court of the United States

of America.

OCTOBER TERM, A. D. 1902.

SIMEON I. GRIN,
Appellant,

vs.

J. H. SHINE, United States Marshal, etc.,
Appellee.

Appellant's Brief.

GEORGE D. COLLINS,
Counsel for Appellant.

Perine Print [redacted] 513 Clay St. S. F.

IN THE

Supreme Court of the United States

of America.

OCTOBER TERM, A. D. 1902.

SIMEON I. GRIN, Appellant, vs. J. H. SHINE, United States Marshal, etc., Appellee.	No. 303

APPELLANT'S BRIEF.

I.

This is an appeal from a judgment of the Circuit Court of the United States for the Northern District of California, remanding the appellant to the custody of the appellee, upon *habeas corpus* sued out by the appellant to obtain his liberty; he being imprisoned by the appellee acting in the official capacity of United States Marshal for the Northern District of California, and in that behalf detaining the appellant under a *mittimus* issued by a Commissioner in proceedings in extradition, had at the instance of Russia and based upon a charge against appellant of *embezzling* 25,000 roubles. The proceedings are based upon a complaint addressed to the District Judge who issued upon it a warrant of ar-

rest returnable before the Commissioner who had not been previously authorized to hear the case, and who never received a complaint and with whom no complaint was ever filed and to whom no complaint was ever presented and who never issued a warrant of arrest. The case is replete with radical violations of the law of extradition.

II.

Errors Assigned.

1. The Circuit Court erred in deciding that the Commissioner possessed jurisdiction to hear the proceedings.

2. Also erred in deciding that the Commissioner possessed jurisdiction to adjudicate upon the matter of appellant's extradition to Russia.

3. Also erred in deciding that the Commissioner possessed the power and jurisdiction to issue the warrant of commitment in the matter of appellant's extradition to Russia.

4. Also erred in deciding that the warrant of arrest issued by the District Judge is valid and not void.

5. Also erred in deciding that the District Judge possessed the power and jurisdiction to make the warrant of arrest and the proceedings thereon returnable before the Commissioner.

6. Also erred in deciding that the complaint in the matter of the extradition proceedings, conferred jurisdiction on the Commissioner to hear and determine said proceedings.

7. Also erred in deciding that said extradition proceedings conferred jurisdiction on the District Judge to issue a warrant of arrest therein.

8. Also erred in deciding that the complaint in said extradition proceedings charges the defendant with the crime of embezzlement according to the laws of the State of California.

9. Also erred in deciding that there is evidence that the appellant committed the crime of embezzlement in the Empire of Russia.

10. Also erred in deciding that the papers in the matter of said extradition are authenticated as required by law.

11. Also erred in deciding that the certificate of the United States Minister to Russia, which appears attached to said papers, is in accordance with the requirements of the Act of Congress of 1882.

12. Also erred in deciding that the certificate last mentioned is valid and according to law.

13. Also erred in deciding that the appellant is not illegally imprisoned and restrained of his liberty in contravention of the Constitution of the United States, to wit: the fifth amendment thereof and in contravention of the extradition treaty between the United States and Russia.

14. Also erred in deciding that John H. Shine, United States Marshal for the Northern District of California does lawfully hold in his custody, the said appellant.

15. Also erred in deciding that said appellant is not entitled to be discharged from the custody of the appellee.

16. Also erred in denying to said appellant restoration to his liberty, upon said writ of habeas corpus.

17. Also erred in its decision dismissing the writ and remanding appellant in that he is deprived of his liberty without due process of law.

Brief of Argument.

It is quite impossible to understand why the principle fundamental in criminal law, that the accused shall have the benefit of the presumption of innocence, and that all proceedings against him shall be strictly construed against the prosecution, should not apply to extradition cases. "The principle," remarked Lord Abinger, C. B., "adopted by Lord Tenderden, that a "penal law ought to be construed strictly, is not only a "sound one, but the only one consistent with our "free institutions. The interpretation of statutes has "always in modern times been highly favorable to the "personal liberty of the subject, and I hope will always "remain so."

Murray vs. Reg., 7 Q. B. 707;
United States vs. Wiltberger, 5 Wheat. 95.

There is no persuasive force in the proposition that courts should seek to rid the country of persons whose extradition is sought; such persons are as fully entitled to the equal protection of the laws as are the citizens of the United States; their liberty is no less sacred than is the liberty of the citizen. While it is true that some judges

of *nisi prius* courts have manifested and expressed a purpose to deprive the accused of the law's protection, and have sought to diminish its value and importance by branding it with the much abused appellation, "technicality", yet it is not to be supposed that the odium of besmirching designation can serve to justify either a disregard of a very fundamental principle of the criminal law, nor excuse judical dereliction in failing to extend the accused the utmost protection guaranteed him by the law in defense of his rights. If some of those judges who are so ready to avoid the embarrassment of attempting to reply to that which is unanswerable, by resorting to deprecating terms in the nature of condemnation for all "technicality", would only pause for a moment and understand that technicality is the life of the law, and that juridical history is replete with illustrious instances of its exceedingly beneficent operation in maintaining the cause of justice, and in safeguarding the rights of the citizen against the exertion of arbitrary power, to say nothing of the great protection it has at all times afforded the innocent and the oppressed, there would be none of that senseless and unlawyer-like and unreasoning tendency to criticise the technicality of the law; the tendency is most reprehensible, because at best it is but a tribute to the populistic or, perhaps, anarchistic teachings of those who maintain that the law should not be a science nor anything more than the pliant and pliable instrument of " popular will";—a sort of mob sovereignty as it were. We therefore have no respect for an argument that hangs upon the ragged edge of invective against the technicality of the law.

The matter of extradition is of no such nature as to incline courts to view it with favor or indulgence. It not only has for its purpose the deprivation of liberty but it is a direct invasion of the political right of habitation within our territory, wherever and whenever the exile or banishment from our shores is wrongful; therefore every reason exists for construing the law strictly and exacting a rigid adherence to its requirements. It is entitled to serious consideration whether the appellant here shall be deprived of the protection given the rights of man by the laws of the United States and turned over to the inhumanity that has made revolting the penal system of Russia. Certainly nothing less than a clear case and a precise compliance with the law of extradition can justify the enforced exile of one who is under the protection of our laws. The notion that the individual is of such little consequence that he is to be sacrificed at the pleasure of the sovereign, is a survival of the times when monarchy was omnipotent and the subject had no rights that were worthy of consideration; the same notion has given rise to some indefensible propositions that have been referred to by judges who ought to know better, as being controlling doctrines in the modern law of international extradition; indeed one would think that the efforts of some judges at *nisi prius* to escape from the manifest requirements of the law by rejecting what they are pleased to condemn as being nothing but "technicalities", is due to their belief that every man holds his life and liberty at the arbitrary will of the sovereign and not under the protection of the law; with such judges the sovereign is the State and the mere

expression of his will is a sufficient warrant for the surrender of the subject even though he be within the protection and according to *Calvin's Case*, within the "ligeance" of our government. Every alien within our jurisdiction has the same right to the equal protection of our laws as is possessed by a citizen; embraced within that protection is the fundamental right to the presumption of innocence and the right to have the charge and the sufficiency of the evidence tested by the laws of the State in which he is apprehended; in this case, the law of the *forum* is the law of the State of California, in respect to whether the charge as laid constitutes the crime of embezzlement; whether the record shows a warrant of arrest upon the charge and whether there is any competent evidence supporting the charge. Whether the offense as charged is extraditable and whether the procedure in the matter of extradition has been complied with in respect to jurisdictional prerequisites must be determined from the treaty and from the laws of the United States.

1. In the first place, under the law governing the matter, the Commissioner had no jurisdiction over the case. The plain import of section 5270 of the Revised Statutes is, that the necessary authority must be conferred upon the Commissioner at a point of time previous to the issuance of the federal warrant of arrest. The warrant must emanate from the officer who hears the case; the warrant is, upon common law principles, quite elementary, jurisdictional in its nature; it is the very basis of the proceedings. And the statute explicitly makes it essential.

Sec. 5270, Rev. Stat.

The same statute confines the jurisdiction in respect to the hearing and determination of the case, to the officer or judge to whom the complaint is presented and who issues the warrant of arrest. The mere reading of the statute cited is amply sufficient to prove the correctness of our position; but we also cite:

Matter of Henrich, 5 Blatchf. 425;

Matter of Fares, 7 Blatchf. 45.

Our case was heard and determined by the Commissioner. No complaint was ever presented to him; nor was a warrant of arrest ever issued by him; nor was he ever invested with authority by any court of the United States, at any time prior to the filing of the complaint or the issuance of the warrant of arrest; in fact and as the record shows, no attempt was made to confer the essential authority upon him until *after* the filing of the complaint and until *after* the issuing of the warrant of arrest; and even then, the authority was not and never has been conferred by any *court* of the United States; but was merely attempted to be conferred by the District Judge acting not as a court but in chambers as the Judge of the court. Of course there is a wide and important difference between the two. The statute (sec. 5270) expressly requires that the necessary authority of the Commissioner be conferred by the *court*, as contra-distinguished from the judge of the court. In our case the complaint was not made under oath before any officer specified in section 5270; in addition to that fatal defect, the complaint was presented and addressed to the Judge of the District Court; *he* thereupon issued and signed the warrants of arrest and made the same returnable before a designated person as

Commissioner, although the necessary authority had not been previously or at all, ever conferred on the person designated in the warrant of arrest. The statute is the source and measure of the power of both the Judge and the person acting as Commissioner; it is very rudimentary then that no power or authority in respect to a special jurisdiction can be taken by intendment, construction or implication. The language of the statute is exclusively the test; if the terms used do not confer the powers asserted or claimed, then the necessary conclusion is that the jurisdiction has been denied.

In re Farez, 7 Blatchf. 45;
Long vs. Superior Court, 102 Cal. 452;
Winter vs. Fitzpatrick, 35 Cal. 269;
Chollar M. Co. vs. Wilson, 66 Cal. 376.

As the statute makes no provision for it, the *District Judge* had no power or jurisdiction to make the warrant of arrest returnable before the Commissioner and no authority to refer the case to him for hearing and determination. An appointment of the Commissioner the day *after* the filing of the complaint (which, it must be borne in mind, was addressed to and filed with the District Judge), was of course a nullity; the law requires (section 5270) that the necessary authority be conferred upon the Commissioner before the filing or presentation of the complaint; but if the appointment was valid, then the second warrant of arrest, which is the jurisdictional warrant here, is void, for if the District Court conferred the authority over the proceedings upon the Commissioner, then the power and jurisdiction of the latter thereby became exclusive of the District Judge, and he could not subsequently perform any

function in the case, for in respect thereto his power had been superseded.

1 Moore on Extr., sec. 301.

It is impossible that both the Commissioner and the District Judge should possess co-equal authority over the case; when the Commissioner is vested with the authority, it is as co-extensive as that conferred by the statute on the District Judge, and of equal dignity; it is quite impossible that both should exercise jurisdiction over the case; it must of necessity be exclusive in one or the other. Even concurrent jurisdiction can never be exercised concurrently by two or more distinct and independent tribunals or officers; the one first acquiring cognizance of the case, possesses exclusive jurisdiction over it. Applying that well-settled principle here, the exclusive jurisdiction vested in the District Judge and he could not divest himself of that jurisdiction by assigning or transferring the case to the Commissioner; on the other hand, if the jurisdiction vested in the Commissioner, then the District Judge had no power to subsequently issue the warrant of arrest.

The conclusion is that the Commissioner had no power to hear or determine the case:

1. He never issued the essential warrant of arrest;

2. The complaint was never filed with nor presented to him; on the contrary, it is addressed to and filed with and was presented to the District Judge. The contents of the complaint demonstrate that it is not made to the Commissioner;

3. Without both a warrant and complaint, the Commissioner is certainly without jurisdiction;

4. The Commissioner was never specially authorized to *receive* the complaint or issue the warrant *previous* to the filing of the complaint or *previous* to the issuance of the warrant. Therefore he had no jurisdiction to hear or pass upon the case.

"Where a warrant of arrest is returnable before a "Commissioner for hearing, it should be one who has "been previously appointed by the Circuit Court under "which he holds his commission to act under the stat-"utes relating to extradition."

1 Moore on Extr., sec. 301;

5. None of the officers designated in section 5270 of the Revised Statutes has jurisdiction of an extradition case and cannot acquire the necessary jurisdiction until a complaint has been presented to him and he, upon that complaint, issues his warrant of arrest returnable before himself. Such is the language of the statute;

6. As the District Judge acquired and exercised jurisdiction over the case, his jurisdiction was necessarily exclusive and being such he had no power to divest himself of that jurisdiction by transferring or assigning the case to the Commissioner. The jurisdiction over the case having become *exclusive* in the District Judge, no other officer designated in the statute could thereafter exercise any of the powers within the scope of that jurisdiction; otherwise the jurisdiction would not be exclusive. It is elementary that no court can divest itself of a jurisdiction once vested; the same rule necessarily applies to the Judge of the court.

The Circuit Court is in error in ruling that the Commissioner need not be specially appointed in extradition

cases and in invoking the general law as to the appointment of Commissioners of the *Court*. Section 5270 of the Revised Statutes has no application whatever to Commissioners appointed under the statutes referred to in the opinion filed by the Circuit Court.

The case of *Henrich*, 5 Blatchf. 414, relied upon by the lower court to sustain the jurisdiction of the Commissioner, has not the slightest application to the question, as the point for which it is cited was neither raised nor decided.

Cross vs. Burke, 146 U. S. 82;
Balch vs. Haas, 73 Fed. 974;
Central Irrigation Dist., 117 Cal. 388.

III.

The complaint charges no embezzlement.

The sufficiency of the complaint must be determined according to the law of the State of California.

In re Ezeta, 62 Fed. Rep. 972;
1 Moore on Extr., sec. 344.

Section 508 of the Penal Code of California is as follows:

"Every clerk, agent, or servant of any person who "fraudulently appropriates to his own use, or secretes "with a fraudulent intent to appropriate to his own, "any property of another which has come into his con- "trol or care by virtue of his employment as such "clerk, agent, or servant is guilty of embezzlement."

It is necessary, therefore, that the complaint show that the accused had the possession of the property, in this case the money, *by virtue of his employment*, and that he *fraudulently* appropriated it.

1. The averment is that the accused received the money "in his capacity of clerk". Clearly that is not an averment of receipt of the money *by virtue of his employment* as clerk. The allegation of the complaint may be true, and yet the money may not have been received by virtue of his employment. A similar allegation has been held to be fatally defective in not showing that the money was received by virtue of the employment even though it did show that the defendant received it *as clerk*. And the statute is identical with that in California.

State vs. Johnson, 21 Tex. 775.

The ruling is recognized as well settled law in

Moore vs. United States, 160 U. S. 272 and 274.

"For another reason, however, we think the indict-
" ment in this case is insufficient. If the words charg-
" ing the defendant with being an employee of the
" post-office be material, then it is clear, under the cases
" above cited, that it should be averred that the money
" embezzled came into his possession by virtue of such
" employment."

Moore vs. United States, 160 U. S. 274.

2. The complaint does not charge that the accused *fraudulently* appropriated the property. To constitute the offense, the law of California in the section of the Penal Code above quoted, requires that the money be *fraudulently* appropriated. It is true the complaint alleges that the accused "wrongfully, unlawfully and " feloniously appropriated said money"; but that is not the equivalent of an allegation that he did so *fraudu-*

lently, and does not supply the defect. The law is so stated in

Bishop on Statutory Crimes, sec. 458.

"Fraudulently in the statute is not covered by 'un-
" 'lawfully and feloniously' in averment."

1 Bishop's New Crim. Proc., sec. 613.

As to the necessity of pleading that the appropriation was fraudulent, see

People vs. Mitchell, 92 Cal. 590.

Every essential constituting the offense charged must be averred in the complaint, or it is fatally defective.

United States vs. Hess, 124 U. S. 486.

"The complaint before a magistrate must state the
" essential elements of the crime to a common cer-
" tainty."

People vs. Howard, 111 Cal. 656.

The rule there declared applies to extradition cases.

In re Farez, 7 Blatchf. 35.

There is nothing opposed to our position in the case of San Francisco vs. Randall, 54 Cal. 108, cited by the appellee. If the word "fraudulent" was omitted in that case, no point was made upon it and no decision rendered in that respect; and, therefore, under a well settled rule, the case is not authority on the question.

Cross vs. Burke, 146 U. S. 82;
Central Irrigation Dist., 117 Cal. 388;
Balch vs. Haas, 73 Fed. 974.

IV.

The oath to the complaint is taken before George E. Morse, and there is nothing to show that he was specially authorized, as required by section 5270 of the Revised Statutes. The absence of such authority, or which is the same thing, the omission to make it affirmatively appear, is fatal, and renders the oath a nullity.

1 Moore on Extr., secs. 284, 296;
Re Farez, 7 Blatchf. 34;
Re Kelly, 25 Fed. 268.

V.

Under the law of the State of California a person imprisoned on a criminal charge is entitled to his liberty on *habeas corpus* if the complaint does not state facts sufficient to constitute a crime or public offense.

Ex Parte Maier, 103 Cal. 479.

And the law of California is the law which governs the case.

In re Ezeta, 62 Fed. Rep. 972;
1 Moore on Extr., sec. 344.

VI.

The only reply made by the Circuit Court to the points raised upon the complaint is, that the word "embezzle" is used and necessarily imports all the elements of the crime. If anything can be considered elementary law it is the proposition that an accusation must state the facts as contra-distinguished from legal conclusions. Now to charge that a person "embezzled" certain prop-

erty is nothing but a naked conclusion of law, and is clearly insufficient.

Moore vs. United Ststes, 160 U. S. 270, 272, 274;
Com. vs. Moore, 5 Cush. 603;
People vs. Neil, 91 Cal. 468;
People vs. McKenna, 81 Cal. 158;
United States vs. Watkins, 3 Cranch C. C. 441;
United States vs. Hess, 124 U. S. 483, 487;
United States vs. Carll, 105 U. S. 611.

VII.

No Warrant of Arrest.

The treaty requires an authenticated copy of a warrant of arrest or some other equivalent judicial document issued in Russia by a judge or magistrate duly authorized to do so.

In the first place there is no such process in the record as a warrant of arrest nor its equivalent. In the next place, the papers in the record, other than the depositions, are not authenticated. There is nothing to show that the "examining magistrate" was duly or at all authorized to issue a warrant of arrest or to issue the "equivalent judicial document". The certificate attached to the papers is confined to the purpose of their use as *evidence* and says nothing about that part of the record not consisting of the depositions to which the certificate relates; nor does the certificate assert anything concerning the authority of the "Examining Magistrate" to make or issue the various orders appearing in the record, or to issue a warrant of arrest or the "equivalent judicial document". And even if a warrant of arrest or equivalent judicial document were in

the record, it would be void as it does not set forth the offense charged.

Matter of Farez, 7 Blatchf. 50;
1 Bishop New Crim. Proc., sec. 228.

That which is referred to by the Circuit Court as being warrants of arrest are manifestly not such. They are not and do not purport to be process; they may possibly be made the basis of a warrant of arrest or other equivalent judicial document to be thereafter issued; but that is all, even under the most liberal construction. A warrant of arrest or equivalent judicial document must be addressed to some executive officer and command him to seize the body of the accused and bring him before the magistrate.

1 Bishop New Crim. Proc., sec. 187.

There is no such warrant nor its equivalent in this case.

The Circuit Court is certainly in error in striking from the certificate, as being surplusage, the words "as "evidence". It does not meet our objection that there is no authentication of any warrant of arrest or of an "equivalent judicial document", nor anything showing authority in the magistrate, to issue such warrant or its equivalent, to say as does the Circuit Court that the words "similar purposes" used in the certificate have been construed to mean "evidence of criminality". The warrant of arrest or its equivalent can never be "evi- "dence of criminality". We repeat, the certificate is addressed exclusively to matters of evidence and therefore it cannot serve to authenticate anything that is not matter of evidence.

VIII.

No indictment.

According to the complaint the accused has been indicted; yet there is no indictment in the record. If there is an indictment, no other evidence of the charge or of the fact that the accused has been charged in Russia, is admissible.

Hawley on Extr., 47, 48;
1 Moore on Extr., sec. 226.

Of course it must be made to properly appear by the demanding Government, that the accused has been charged with or convicted of crime (Treaty, Art. I). In this case it is not claimed that the accused has been convicted of crime; the claim is that he has been charged with crime and has been indicted. Therefore, no evidence of the existence of the charge is competent or admissible unless it be an authenticated copy of the indictment. Without it the United States cannot determine whether the accused is charged with crime; nor whether the crime as charged is extraditable. The Circuit Court failed to grasp the point.

IX.

No valid certificate.

The certificate is fatally defective; it is not in accordance with the requirements of the Act of 1882. In the first place the certificate states that the papers "are pro- " perly and legally authenticated so as to enable them " to be received and admitted as evidence for similar " purposes by the tribunals of Russia".

The language of the Act of 1882 is, that the papers

" shall be received and admitted on such hearing for all " the purposes of such hearing if they shall be properly " and legally authenticated so as to entitle them to be " received for similar purposes by the tribunals of the " foreign country from which the accused party shall " have escaped, and the certificate of the principal dip- " lomatic or consular officer of the United States resi- " dent in such foreign country shall be proof that any " deposition, warrant or other paper or copies thereof, " so offered, are authenticated in the manner required " by this Act". This law provides for the admission and receiving in evidence of such papers on the hearing in the United States; whereas the certificate is, that the papers are so authenticated as to entitle them to be received and admitted *as evidence by the tribunals of Russia*. The phrase in the Act of 1882 "if they (the pa- " pers) shall be properly and legally authenticated so as " to entitle them to be received for similar purposes " by the tribunals of the foreign country from which " the accused party shall have escaped", does not relate to extradition purposes as asserted by the certificate, but has reference entirely to evidence of *criminality*.

So held in

Orteiza vs. Cortes, 136 U. S. 337, 338.

The certificate in our case says that the papers are entitled to be received and admitted in evidence in Russia for the purposes of *extradition proceedings*. There is quite a difference between the language of the Act of 1882, if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes, and the language of the certificate in

question, "are properly and legally authenticated so " as to entitle them to be received and admitted *as* " *evidence for similar purposes*". The Act of 1882 has reference to the ultimate fact; the certificate, on the other hand, instead of attestation to the fact, refers to what is admissible *as evidence of the fact*. We insist that the certificate is fatally defective.

In re McPhun, 30 Fed. Rep. 57;
In re McPhun, 24 Blatchf. 254;
Orteiza vs. Jacobus, 136 U. S. 330.

It is one thing to say that the papers are properly and legally authenticated "so as to entitle them to be received for similar purposes" by the tribunals of Russia; and quite another and essentially different thing to say, that they are properly and legally authenticated so as to entitle them to be received and admitted *as evidence* for similar purposes by the tribunals of Russia. A reference to the form of certificate prescribed by Judge Blatchford and which is set forth at page 45 of Hawley on International Extradition, will demonstrate the insufficiency of the certificate in our case. The certificate in the McPhun case, 30 Fed. 58, was much less objectionable than the one in our case and yet it was held to be fatally defective.

2. In the next place the certificate is altogether too indefinite; it does not identify the papers to which it relates; it certainly was not designed to embrace the orders of the "examining magistrate", nor the order permitting a civil suit; and yet they are just as much a part of the papers to which the certificate is attached as are the depositions. Our point is, that the certificate is too

vague in its reference; it is uncertain whether it has relation to only some or all of the papers; and if to some, it is uncertain which of them. The certificate should either specify the papers in detail or else should be separately attached to each.

" Each piece of the documentary evidence offered by " the agents of the foreign government in support of " the charge of criminality should be accompanied by " a certificate of the principal diplomatic or consular " officer of the United States, resident in the foreign " country from which the fugitive shall have escaped, " stating clearly that it is properly and legally authen- " ticated, so as to entitle it to be received in evidence in " support of the same criminal charge by the tribunals " of such foreign country."

In re Henrich, 5 Blatchf. 414;
In re McPhun, 30 Fed. 60.

Certainly the certificate in our case is not a compliance with this rule. The Henrich decision is approved in

Orteiza vs. Jacobus, 136 U. S. 337, 338.

X.

No evidence of authority to make complaint.

There is no evidence that the Russian Consul had authority to make the complaint. The requisite authority must affirmatively appear to have been specially conferred by the Russian Government.

In re Herris, 32 Fed. 583; reversed 33 Fed. 165;
In re Ferrelle, 28 Fed. 878;
1 Moore on Extr., secs. 219, 220;
Hawley's Intern. Extr., p. 35.

XI.

No evidence of embezzlement.

As to the question whether there is evidence of embezzlement, the law of California controls its determination.

See Treaty Art. 1, U. S. Stat. at Large, Vol. 28, p. 1072, and the evidence must be carefully scrutinized.

Hawley on Extr, p. 37.

1. The charge as set forth in the complaint is, that Zeefo entrusted 25,000 roubles of his money to the defendant who took the same and absconded therewith. Assuming the fact to be as charged, that *Zeefo* delivered the money to defendant and that it was Zeefo's money, the evidence is, that the money or rather the bank bills, were turned over to defendant who merely as a messenger, was to carry the same to the railroad administration to be by the latter sent to Novoroseesk; that instead of obeying instructions, he took the money and absconded; it appears that it was not within the scope of defendant's employment to receive money and transmit it. On the foregoing facts the defendant had nothing more than the bare custody as contra-distinguished from the possession of the money and he therefore could not and did not commit embezzlement. The offense, if any, was larceny.

United States vs. Clew, 4 Wash. C. C. 700;
Rex vs. Bass, 1 Leach C. C. 251;
Rex vs. Chipchase, 2 Leach C. C. 699;
Rex vs. Low, 10 Cox C. C. 168;
Phelps vs. People, 72 N. Y. 360 et seq.;
Com. vs. Berry, 99 Mass. 428;
Johnson vs. People, 113 Ill. 99;

2 East Pleas Crown, 566;
1 Wharton's Crim. Law, secs. 957, 960;
18 Am. & Eng. Ency. Law (2d ed.), pp. 473 et seq.;
10 Am. & Eng. Ency. Law (2nd ed.), 988.

It is claimed that this well settled rule has been changed or abolished by statute in California. But in that state as elsewhere, the distinction between bare custody and possession, in the law of larceny, and of embezzlement, is fully recognized as being inherent and elementary.

People vs. Raschke, 73 Cal. 381;
People vs. Belden, 37 Cal. 52;
People vs. Abbott, 53 Cal. 284.

And it is the law in California that evidence of larceny will not sustain a charge of embezzlement.

People vs. Johnson, 91 Cal. 265.
See Treaty, Art 2, U.S. Stat. at Large, vol. 28, pp. 1072, 1073.

There is nothing in section 508 of the Penal Code that is in conflict with the common law distinction between possession and the bare custody. If, under that section, property comes into the *care* of a servant *by virtue of his employment*, and he fraudulently appropriates it, his crime is embezzlement. But the "care" referred to in the statute, is possession as contra-distinguished from the bare custody.

People vs. Abbott, 53 Cal. 284;
People vs. Belden, 37 Cal. 52.

Formerly it was not embezzlement for a servant to appropriate the property of his master in the servant's *possession*, if that possession was derived from the *mas-*

ter. It was well settled that the statute relating to embezzlement was confined to cases where the servant received the property from a third person, but for the master. That distinction has been abolished by statute; and it is now immaterial whether the servant has received the possession from the master or from a third person; but the rule still continues, that if the servant has but a *bare custody*, and not the possession of the property, he commits larceny and not embezzlement if he appropriates the property. That, for instance, is the law in Illinois and Massachusetts and New York, where the statute relating to embezzlement was the same as in California, when the following were decided:

Com. vs. Berry, 99 Mass 428;
People vs. Johnson, 113 Ill. 99.
Phelps vs. People, 72 N. Y. 360.

It is also the law in Texas:

Cobletz vs. State, 36 Tex. 353.

Likewise in California:

People vs. Belden, 37 Cal. 52;
People vs. Raschke, 73 Cal. 381.

The note at p. 130 of 98 Am. Dec., relied upon by the counsel for the Russian Government, is misleading to one who is not familiar with the history of the law of embezzlement. An examination of the cases referred to in said note will show that they do not hold that a statute such as referred to in the note abolishes or in any wise affects the common law distinction between possession and bare custody. What the author of the note referred to is, that a statute making it embezzlement for a servant to appropriate property "under his care" covers the case where the property has been

received from the *master;*—a proposition that has no relevancy to the difference in law between possession and custody. The misleading part of the note lies in the use of the word "custody" in relation to the point that the statute renders it immaterial whether the servant received the property from the master or from a third person. In that connection, it is of course of no logical significance to inquire whether the servant has the mere custody of the property, as that matter has no bearing upon the point in reference to whether the property was received from the master or from some third person. There is no decision cited by the author of the note that sustains or tends to sustain the proposition that a servant having the "bare custody" as contra-distinguished from the possession of the property can be prosecuted for embezzlement. He cites cases from New York, Illinois and Texas, in all of which States the common law distinction between the bare custody and the possession is recognized and followed.

Phelps vs. People, 72 N. Y. 360;
People vs. Johnson, 113 Ill. 99;
Cobletz vs. State, 36 Tex. 353.

There is no case or doctrine in the books that will sustain the proposition of the note to 98 Am. Dec. 130, that because the statute has abolished the distinction between the case where the servant receives the property from his master and the case where he receives it from a third person, that therefore the bare custody of the property by the servant is a sufficient basis for a charge of embezzlement where the servant appropriates the property. If that were true, some writer of acknowledged authority on the criminal law, or some

court would have declared it to be the law long before this. The fact that no case can be found and that no writer on the criminal law can be cited to sustain the proposition, as well as the inherent unreasonable and illogical nature of it, are conclusive against the *ipse dixit* of the note in 98 Am. Dec. at page 130. There is no authority anywhere that gives the least support to the proposition that the words "under his care" in the statute, cover a case where there is a bare custody as contra-distinguished from possession.

It will be found in many states where the statute defining embezzlements is the same as in California, that the common law distinction between the bare custody and possession is still observed and followed as being entirely in harmony with the statute. In support of this statement, in addition to what we have above cited, we refer the court to

18 Am. & Eng. Ency. Law (2d ed.), 473 *et seq.*

The entire matter is made quite clear by Wharton, where he shows among other things that none of the cases provided for by the statute defining embezzlement and abolishing the distinction between a receiving of the property by the servant or agent from the master and receipt of it by a third person, were larceny at the common law; thus showing that the statute does not affect the common law.

1 Wharton's Crim. Law (10th ed.), secs. 1009, 1027, 1028.

It is certainly the correct conclusion that the law of California recognizes and follows the common law distinction between the bare custody and the possession,

in respect to larceny, and in respect to embezzlement.

18 Am. & Eng. Ency. Law (2nd ed.), 473 *et seq*;
10 Am. & Eng. Ency. Law (2nd ed.), 988.

Of course it will be borne in mind that the complaint and the evidence both show that defendant received the property from his employer. Apilaro represented his employer.

It must also be borne in mind that the treaty takes the distinction between larceny and embezzlement (U. S. Stat. at Large, Vol. 28 pp. 1072, 1073). Therefore evidence of the one will not sustain extradition for the other.

2. In the next place the charge against the defendant, that he embezzled 25000 roubles, "in Russian money" is the language of the complaint; but the evidence as presented by the depositions is that instead of *money*, he took and absconded with *bank bills*. Therefore, we insist, the evidence does not sustain the charge; and in support of the point we cite:

Besek vs. State, 44 Tex. 620;
Bishop on Statutory Crimes (3d Ed.), sec. 346;
Hamilton vs. State, 28 Am. Rep. 653;
State vs. Jim, 3 Murph. 3;
Rex vs. Hill, Russ. & Ry., 190;
Com. vs. Sweeney, 1 Va. Cas. 151;
McAuly vs. State, 7 Yerg. 526;
Johnston vs. State, Mart. & Yerg. 129;
Johnson vs. State, 11 Ohio St. 324;
State vs. Carr, 16 So. Rep. 155;
State vs. Collins, 72 N. C. 144.

The purport of these authorities is, that a charge of embezzlement or larceny of ***money*** is not proved by evi-

dence that the property taken was bank bills. Therefore we insist, there is no evidence that defendant committed the offense charged.

3. If the evidence tends to show anything criminal, it is that the defendant at the time of receiving the check and also the bank bills, intended to steal and carry away the same; that circumstance makes the offense *larceny* and not embezzlement. See

10 Am. & Eng. Ency. Law, 987;
Moore vs. United States, 160 U. S. 269.

4. It clearly appears from the evidence that defendant did not receive the property "by virtue of his em- " ployment as clerk". According to the evidence the duty of defendant was to execute the orders of the "office". On the occasion involved in the charge, he was not executing an order of the "office", but on the contrary was executing an order of the book-keeper, who had been directed by Zeefo to transmit the money to Novoroseesk. Instead of attending to the entire matter, in person, the book-keeper called upon defendant to assist him. It was not at all within the scope of defendant's employment to receive or transmit the money. Therefore his case does not come within the provisions of section 508 of the Penal Code. The burden of proving that defendant did receive the property by virtue of his employment as clerk of Zeefo, is upon the prosecution; the evidence wholly fails to prove the fact. The omission is fatal.

10 Am. & Eng. Ency. Law (2nd ed.), 990.

5. The evidence is also wholly insufficient to show that defendant appropriated the money. The mere fact

that he received the money and had not accounted for it but had taken his departure from Russia, is no evidence of crime, according to the laws of California.

People vs. Page, 116 Cal. 396;
People vs. Royce, 106 Cal. 178;
People vs. Wyman, 102 Cal. 552;
People vs. Tomlinson, 66 Cal. 344;
People vs. Gale, 77 Cal. 121.

Such has always been the law governing the accusation of embezzlement.

Reg. vs. Wolstenholme, 11 Cox C. C. 314;
Reg. vs. Chapman, 1 C. and K. 119;
Rex vs. Smith, R. and R. 267;
Bork vs. People, 16 Hun. 480;
Robinson vs. State, 35 S. E. Rep. 57;
1 Whart. Crim. Law (10th ed.), note 1 p. 879.

According to these authorities there is no evidence in this record even tending to show that the crime of embezzlement has been committed. The flight of the accused is no evidence of the *corpus delicti*.

Wharton's Crim. Ev., sec. 750.

Nor would his confession be any evidence thereof.

People vs. Jones, 31 Cal. 565;
People vs. Thrall, 50 Cal. 415;
Ex Parte Becker, 86 Cal. 402;
People vs. Elliott, 90 Cal. 587;
People vs. Simonsen, 107 Cal. 346.

Upon the point that there is no competent evidence in the record to show *embezzlement*, we would be understood as not at all impugning the rule that the weight of the evidence is not to be considered on *habeas corpus;*

but surely the absence of competent evidence is a point always available upon the writ in extradition cases.

Orteiza vs. Jacobus, 136 U. S. 330;
Terlinden vs. Ames, 184 U. S. 278;
See Treaty, Art. 1, U. S. Stat. at Large, vol. 28, p. 1072.

We again point out that the Treaty (U. S. Stat. at Large, pp. 1072, 1073, vol. 28), takes the distinction between larceny and embezzlement, and that therefore evidence of one will not sustain extradition for the other.

XII.

There are certain material facts alleged in the petition for *habeas corpus* that are not traversed in the return; they are therefore to be taken as the facts of the case.

Whitten vs. Tomlinson, 160 U. S. 242;
Kohl vs. Lehlback, 160 U. S. 296.

XIII.

The mandate.

The executive mandate does not confer authority where no authority exists under section 5270 Rev. Stat. Besides, the mandate speaks from its date, and only those persons to whom it is addressed, who were such at the date of its issuance, can come within its operation. For instance, if when issued, we will say for the extradition of a person in Arizona, that territory afterwards became a State, no Judge of the State court could act under the mandate, because he was not such when the mandate issued.

In the next place the mandate is void because it does not refer on its face to an extraditable offense. Only a

specified class of embezzlements is extraditable; but the mandate refers to embezzlement generally; if embezzlement generally was extraditable the mandate would be proper in its statement of the offense. As the mandate does not in terms designate the kind of embezzlement so as to show it to be within the treaty, it is a nullity.

1 Moore on Extr., sec. 223.

We respectfully submit that the judgment appealed from should be *reversed*.

Geo. D. Collins

Counsel for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

In the Matter of the Extradition of
SIMEON IVANOW GRIN,
alias
VALENTINE SEMASHKA.

BRIEF ON BEHALF OF THE RUSSIAN GOVERNMENT, INTERVENOR.

This is an appeal from the decision of the United States Circuit Court, Northern District of California, Ninth Circuit, dismissing a writ of *habeas corpus* sued out by said Grin, and remanding said Grin to the authority of the United States Marshal under a warrant of Commissioner Heacock for his extradition to the Empire of Russia.

Statement of the Case.

In the opinion of Hon. W. W. Morrow, Circuit Judge, reported in 112 Federal Reporter, page 790, there is such a complete statement of this case that we beg

leave to incorporate the same herein as presenting fully the salient facts in this case.

Extradition proceedings for the surrender of the petitioner herein were instituted on behalf of the Empire of Russia, under the provisions of the treaty of 1893 between the United States and Russia, charging the petitioner with the crime of embezzlement, committed under the following circumstances: On the 6th day of March, 1901, Simeon Ivanow Grin, a Russian subject, was residing in the city of Rostov on the Don, in the Empire of Russia, and was in the employ of the representatives of the firm of E. L. Zeefo & Co., an export corn-trading concern doing business in that city. On that day Grin was intrusted with the sum of 25,000 roubles in Russian money, in his capacity as clerk, by one of said representatives of the firm of Zeefo & Co., and instructed to deliver the said money to the administration of the Vladikavkaz Railroad, in said city. Grin did not deliver the money as directed, but appropriated the whole amount to his own use, and immediately absconded from the Empire of Russia to the United States; locating in the City and County of San Francisco, State of California. On October 8, 1901, the mandate of the Secretary of State of the United States was issued to the officers given jurisdiction of extradition proceedings, under Section 5270 of the Revised Statutes, directing the arrest of Grin upon the charge of embezzlement, and that a warrant should issue for his surrender to the Empire of Russia, pursu-

ant to treaty stipulations between that country and the United States, if, upon the proper proceedings, sufficient evidence of his guilt was produced. This mandate was presented to the United States District Judge for the Northern District of California on October 16, 1901, together with the complaint of the Russian Imperial Consul stationed at San Francisco. The said Judge thereupon issued a warrant for the apprehension of said Grin, in accordance with the terms of said mandate; ordering Grin to be brought before the said Court. This warrant was directed to the United States Marshal for the Northern District of California. The prisoner was not found within that jurisdiction, and on October 17, 1901, a second warrant was issued by said district judge for the apprehension of the said Grin, directed to the United States Marshal of any district of California. This warrant provided for the bringing of the prisoner before Hon. E. H. Heacock, a commissioner of said Court. On the same day a special order was made by said Court authorizing the said commissioner to discharge all the duties and exercise all the powers which may be performed by a Justice of the Supreme Court, or a circuit or district judge, under Section 5270 of the Revised Statutes. The prisoner was arrested under this warrant in the Southern district of California, and brought before the said commissioner, when the usual proceedings were had. On November 23, 1901, the said commissioner certified to the Secretary of State the record of such proceedings; also that

he deemed the evidence produced sufficient to sustain the charge of the said complaint under the provisions of the extradition treaty and convention between the United States and Russia; and that he had therefore issued his warrant for the commitment of the said Grin to the custody of the United States Marshal until proper orders were received from the President of the United States for his surrender to the proper officers of the Russian government. The said Grin thereupon petitioned the Circuit Court for a writ of *habeas corpus*, and for a writ of *certiorari* to the said commissioner, requiring him to certify to said Court the record, proceedings, and evidence, and his authority by virtue of which he assumed to issue and did issue a warrant of commitment against the petitioner. The petition was granted, the writs issued and obeyed, the matter fully submitted to the Court, and the Court dismissed the writ.

I.

The first point relied upon by the petitioner for a reversal of the judgment of the Circuit Court is the want of jurisdiction in the commissioner to act in these extradition proceedings.

There does not seem to be any question from the evidence as to the guilt of the prisoner. The only defense attempted has been an extremely technical one, and it is just such defenses in extradition proceedings that the Federal Courts look upon with disfavor.

The latest expression on this subject is by the United States Circuit Court of the Southern District of New York, *in re Neely*, 103 Federal Reporter, 629, where Judge Lacombe uses the following language:

> "Various technical objections are urged to the sufficiency (in form) of the various documents presented; as, for instance, that a certain certificate is signed by the military governor, and not by the principal diplomatic or consular officer; and that there is no certification that certain depositions are so authenticated 'as to entitle them to be received for similar purposes by the tribunals of the foreign country'—probably not material when authenticated so as to be received upon the special independent investigation to be had here under the Act of 1900. Objections of this class are not given the weight once accorded to them when the granting of a request for extradition was more jealously regarded by the Courts than it is today. Originally it seemed to be the theory that the sole foundation of the practice rested in reciprocity; and that, if some particular foreign country were backward about returning our criminals, we would be keen to keep theirs. During this period Courts were astute to find flaws in certificates, jurats, seals, and signatures as an excuse for refusing the request of some demanding government. At last, however, it seems to have been discovered that the thief, the ruffian, or the forger was not a particularly valuable acquisition; and that, although it might be highly desirable that offenders against our laws should be brought back here and tried, as a deterrent example, it was possibly more important that this country should not be made a city of refuge for foreign criminals, and that an enlightened public policy would be astute to return them, once we were satisfied that they were criminals. The expression of this public policy is found in the

provisions of the Act of Congress which excludes convicted criminals whose offenses are not political, with those afflicted with contagious diseases and such as are liable to become a public charge. Since then there has not been so much hypercriticism in dealing with objections as to form, and if the certificates, signatures, etc., are in substantial conformity to the requirements of the statute, and give reasonable assurance of authenticity, it is sufficient. Such seems to be the case here, and the documents are admitted for what they may be worth. Some of them are mere declarations of opinion, containing no relevant facts. Their effect, however, will not now be discussed."

In the case of *ex parte Sternaman*, 77 Federal 595, and *in re Herres*, 33 Federal 167, the same doctrine is laid down, that is, that the Courts of this country are anxious to get rid of these criminals if there is reasonable authenticity to the papers and documents and they are reasonably assured of his or her criminality.

In *ex parte Sternaman*, where objections were made to the complaint, as counsel has made to the complaint in this case, the Court says, at page 596:

> "The complaint should set forth clearly and briefly the offense charged. It need not be drawn with the formal precision of an indictment. If it be sufficiently explicit to inform the accused person of the precise nature of the charge against him it is sufficient. The extreme technicality with which these proceedings were formerly conducted has given place to a more liberal practice, the object being to reach a correct decision upon the main question—is there reasonable cause to believe that a crime has been committed? The complaint may, in some instances, be upon information and

belief. The exigencies may be such that the criminal may escape punishment unless he is properly apprehended by the representatives of the country whose law he has violated. From the very nature of the case it may often happen that such representative can have no personal knowledge of the crime. If the offense be one of the treaty crimes and if it be stated clearly and explicitly so that the accused knows exactly what the charge is, the complaint is sufficient to authorize the commissioner to act."

In re Herres, 33 Federal 167, which is an earlier case, Justice Brewer, of the Circuit Court, District of Minnesota, said:

> "Finally, I might observe, with reference to these extradition proceedings, that the substance, and not the form, should be the main object of inquiry, and that they should not be conducted in any technical spirit with a view to prevent extradition. While the Courts should review the proceedings to see that no extradition is consummated upon a mere pretext, or to subserve private malice, yet, if it appears that a crime has been committed, and probable that the accused has fled to this country for refuge, then a spirit of fairness, expecting that the foreign country will treat extradition proceedings from this country in the same spirit, requires that we act reasonable and justly, having reference more to the substance than to the form of the proceedings. Between governments, as between individuals, the golden rule is both wise and sound."

Appellant first claims that Commissioner Heacock did not have authority to act herein because the mandate issued by the Secretary of State was addressed in the language of the statute to "every Justice of the

" Supreme Court, district judge or circuit judge or " commissioner especially authorized". Appellant maintains that under this language Commissioner Heacock could not act, because he was not especially authorized to act at the time when the mandate was issued. The answer to this argument is that the mandate and the statute mean that the official who acts thereunder must be authorized to act at the time when he acts; for instance, if at the time when the mandate was issued there should be a vacancy in any one of these offices, or if subsequently to the issuance of the mandate the incumbent of any one of these offices should die, and the successor be appointed, there can be no question that the appointee to such vacancy prior to any *action* by him under the mandate would be competent to act thereunder and would be the person referred to in the mandate. It is only necessary that, when an official acts under such a mandate, he should at that time have the authority so to act.

II.

Appellant next maintains that the commissioner did not have jurisdiction to act, because the warrant was issued by the district judge and should have been made returnable before the district judge; that the commissioner could only act under a warrant that was issued by him, and he urges that the district judge in issuing the warrant of arrest and making it returnable before the commissioner, and not before himself, ex-

ceeded his power. The best answer to this point is found in the opinion of Circuit Judge Morrow on page 793 down to the bottom of page 795, 112 Federal Reporter. This portion of Judge Morrow's opinion is so clearly a complete answer to appellant that we ask the Court to read it as a part of this brief.

The record shows that the commissioner was especially authorized by an order of the United States District Court to act in such matters before the prisoner was arrested and before the commissioner took any steps in said proceedings. The practice followed in this case is of long standing in the same circuit. In the *Arnold case* the warrant was made returnable before the United States District Judge of that circuit, Judge De Haven, and the matter was referred by him to Commissioner Heacock for hearing. On the first hearing the prisoner waived all testimony and wanted to be sent back to England. He afterwards changed his mind, and a writ of *habeas corpus* was taken out before Circuit Judge Morrow. The said writ was sustained and the said case was re-referred by Circuit Judge Morrom to Commissioner Heacock for hearing.

The only necessary requisite for a commissioner to act in extradition proceedings is that before acting he must have been authorized to act under Section 5270 of the Revised Statutes. The mere fact that the warrant of arrest made returnable before the commissioner was made after the complaint was filed in the District Court could have no effect upon the matter. It does not mat-

ter when that complaint was filed or when the mandate was issued, the only question is, Did the official who acted under said warrant have jurisdiction to act at the time when he acted?

III.

Appellant claims that the complaint is defective because it does not use the word "fraudulent" in one place, and in another place because it uses the word "indictment". This has been settled under the law of California. Of course the commissioner or the judge sits entirely as a committing magistrate; therefore, apart from the language of the Court in *ex parte Sternaman*, that the complaint need not have the accuracy of an indictment or information, but is sufficient if it informs the prisoner of the nature of the charge he is compelled to answer, that complaint would be good under the Code and under the decisions of the Supreme Court of this state.

In *City and County* vs. *Randall*, 54 Cal. 408, the Court said:

> "The complaints allege that Tyler was president and manager of a corporation; as such manager had under his control securities of the value of $60,000, which were held by the corporation as a pledgee, the names of the owners of the securities being unknown to the deponent; and that Tyler did willfully, unlawfully, and feloniously embezzle and convert the securities to his own use, contrary to the execution of his trust. We think here is a substantial compliance with Section 1426 of the Penal Code."

There the words "willfully, unlawfully, and feloniously" are used, leaving out the word "fraudulently", which is used in the statute. That is in compliance with Section 1426 of the Penal Code, which is as follows:

> "All proceedings and actions before a Justice's or Police Court"--and in this case the commissioner sat as a committing magistrate—"for a public offense of which such Courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint."

That is almost the language of the Federal Court in *ex parte Sternaman*. In the *Randall case* one of the points was "that the complaint as to embezzlement did " not state facts sufficient to sustain a crime, in that " the property charged to have been embezzled is not " sufficiently described, and that it does not appear " whether it is felony or misdemeanor attempted to be " charged; that Tyler might have done all of the acts " alleged, and not been guilty of embezzlement". The Court held it was within the requirements of a complaint in a Justice's or Police Court. That same criticism is made against this complaint, and this complaint is on all fours with that. So much, therefore, as to the complaint.

IV.

Appellant next makes the point that these proceedings are defective because it does not appear that the

requisition was made by a diplomatic agent, or, in case of his absence, by his superior consular officer. The complaint is not the requisition referred to in Article VI of the treaty. Article VII of the treaty states:

> "It shall be lawful for any competent judicial authority of the United States, upon production of a certificate issued by the Secretary of State, stating that request has been made by the Imperial Government of Russia for the provisional arrest of a person convicted or accused of the commission therein of a crime or offense extraditable under this convention, and upon complaint, duly made."

SECTION 5270 says: "It shall be lawful for certain " officials, upon a complaint, under oath." The complaint is not the requisition referred to in Article VI of the treaty. The requisition referred to in Article VI of the treaty is the requisition referred to in this mandate, wherein the Secretary of State says, "upon the request " of M. de Wollant, Charge d' Affaires of Russian Em- " bassy", etc. If the requisition in Article VI is the requisition required before the complaint, then this mandate of the Secretary of State is conclusive proof that M. de Wollant was charged with the affairs of the Russian Embassy, and therefore the diplomatic agent. That document cannot be contravened. If, however, the requisition referred to in Article VI is subsequent to these proceedings, then it has not been yet made, and the time has not come, and there seems to be ground for that in Article VII. This Article in the middle of the first paragraph, reads:

"But if the formal requisition for surrender,

> with the formal proofs hereinbefore mentioned, be not made as aforesaid by the diplomatic agent of the demanding government, or, in his absence, by the competent consular officer within forty days from the date of the commitment of the fugitive, the prisoner shall be discharged from custody."

From the treaty it would seem that the requisition for the surrender referred to in Article VI is the requisition for the surrender made after these papers have gone to Washington, after the commitment.

Therefore, the requisition referred to in the treaty has been made, if it is required to be made, before the proceedings are begun, by the diplomatic officer, according to the mandate of the Secretary of State. If, however, as would seem to appear from Article VII, the requisition is the one for the formal surrender, made after the commitment, then, of course, it has not yet been made. But, in either case, the complaint is not the requisition. The complaint may be made by anyone.

In re Herres, 33 Federal 166, it was held that anybody can make the complaint, only it must appear in the proceedings somewhere that the proceedings are carried on at the instigation of the foreign government. That is the latest decision upon that point, that it must appear in the proceedings somewhere that the foreign government is behind the proceedings, and that they have been instigated and carried on by it. Section 5270 does not say who shall make it. Counsel says these proceedings have been begun without the necessary

preliminary requisition. Section 5270 simply says, "on a complaint under oath". Any one, apparently, can make it. Article VII of the treaty says, "and upon complaint duly made". But the complaint was under oath. It was made by the consul, and his consular rank presumes authority from his government, and there is no evidence that it was not done by its authority. In fact, he testifies that he did it, as consul. The complaint on its face is signed by him as consul, and his consular rank presumes he is acting on behalf of his government. It does not matter whether he testified that he was so instructed or not, so far as jurisdiction is concerned.

It was held by the Federal Court in the case of *Castro* vs. *De Uriarte*, 16 Federal 97, that a party can proceed either under the treaty, or under the revised statutes. He has two ways of proceeding. Under the revised statutes, there need be no previous mandate. There is no provision as to who shall make the complaint, only it must be under oath. There is no necessity for a warrant. The Court held in that case that, under the law, there is no necessity for a previous warrant; no necessity for a previous mandate, or a previous application; no requisite as to who shall make the complaint, and the party can proceed either under the law, Section 5270, or under the treaty. In 12 Blatchford 380, it was held that there was no necessity for a warrant.

When the question of jurisdiction is concerned, if the tribunal attempting to exercise jurisdiction has jur-

isdiction either under the law or under the treaty, if it has jurisdiction under any source, that is sufficient on a *habeas corpus* proceeding. If a magistrate has jurisdiction, and in *habeas corpus* the sole question is, Did he have jurisdiction, it is sufficient, from whatever source he gets it, and therefore, in an extradition proceeding, if the commissioner can trace his jurisdiction to the law, though it may not be in the treaty, or to the treaty, though it may not be in the law, both being the law of the land, that jurisdiction is sufficient to sustain his right to act in extradition proceedings. I do not believe there can be any dispute as to that proposition on that point.

In *Castro* vs. *De Uriarte*, which we have already referred to, the Court says:

> "Treaties duly ratified under the constitution (article 6) are doubtless a part of the supreme law of the land, and their stipulations and obligations will not be deemed annulled by acts of mere general legislation which can be reasonably construed otherwise. *The Cherokee Tobacco*, 11 Wall. 616, 623; *Taylor* vs. *Morton*, 2 Curt. 454; *Ropes* v. *Clinch*, 6 Blatchf. 304, 309. But the mere fact that a treaty provides a mode of carrying out its provisions, in the absence of legislation, cannot make it incompetent for Congress to pass laws in aid of the treaty, and, in order to facilitate the extradition of criminals, *to dispense with a part of those preliminaries which otherwise it might be necessary for the foreign government to resort to.* The procedure indicated by Section 5270, above quoted, is in substance identical with that contemplated by the treaty with Spain, except that it dispenses with any preliminary executive warrant. Had

there been no law of Congress on the subject, such an executive warrant would have been necessary in order to authorize the magistrates to proceed; but, inasmuch as the law of this country expressly authorizes the magistrates to proceed, 'whenever there is a treaty or convention for extradition', without reference to any preliminary executive warrant, such a warrant seems to me clearly unnecessary, if the demanding government chooses to avail itself of the law existing outside of the treaty, and proceed without the preliminary mandate."

Therefore, we say that if the commissioner finds jurisdiction in the Revised Statutes, it is sufficient, though all the requisites of the treaty may not have been carried out. But in this case there was the preliminary mandate, the complaint is duly made under oath, and it appears from the proceedings that the complaint was made by the consul, and that carries with it the presumption of his official authority.

V.

We next come to the warrant of arrest. Appellant claims that there is no warrant of arrest, or other judicial document issued by a judge or magistrate duly authorized to do so.

If the Court please, there is both the warrant of arrest and a judicial document. In one of the orders, dated the 23rd day of July, you will find it is ordered that the Cossack Grin is arraigned according to the section of the Code in the capacity of accused. It next

sets forth the penalty. It is then ordered that, having committed the crime of which he is thus accused, he be brought up for examination; and fourthly it says, it is ordered that he "is to be brought up for examination " pursuant to Paragraphs 2 and 3, Article 389, of the " *Code of Criminal Procedure*, as he is in hiding under " a false name, and, as is seen from his letters, is look- " ing out for means to prevent his arrest, and the find- " ing out of his address by the authorities, his place of " residence being known at present; that in view of the " proved fact of embezzlement", etc., "there can be and " must be undertaken his detention in custody upon his " examination as the accused, ORDERED: pursuant to " Paragraphs 1, 2, 3 of Article 389, of the *Code of* " *Criminal Procedure*, the Cossack Simeon Ivanow " Grin, alias Valentine Semashka, is to be brought to " the City of Rostov on the Don, in the Province of the " Don Army, in order to be placed at the disposition of " the Examining Magistrate". That is both a warrant of arrest and is a judicial document. It is ordered that the prisoner be brought there, to be placed at the disposition of the Examining Magistrate.

Then comes the next order: It is ordered, "That for " said crime, being embezzlement of a sum larger than " 300 roubles, said Simeon Grin, alias Valentine " Semashko, according to the orders of this date, is ar- " raigned in capacity of accused, pursuant to Part 1, " Article 1681 of the *Penal Code*, and is to be brought " for examination, and subsequently is to be prelimin-

" arily kept under arrest, upon his being examined as " the accused". Then, by virtue of the treaty, it is ordered "to make the proper representation in regard to " the extradition in proper form of the accused", etc.

There is a warrant of arrest. There is a judicial document ordering his arrest, ordering him to be brought to Rostov on the Don, to be kept under arrest, and to be placed at the disposition of the Examining Magistrate.

Appellant says that that warrant of arrest is not duly authenticated, there is no signature of any executive officer. *We claim, in the first place, that the warrant of arrest is not necessary to give jurisdiction under Section 5270 of the Revised Statutes.* We say, in the second place, that this paper, which is either a warrant of arrest or a judicial document equivalent thereto, does not have to be authenticated by the signature of any judge or any executive officer.

In Article VI of the treaty there is a distinction drawn between the authentication of a judgment of the Court and the authentication when the prisoner is simply charged. In Article VI, paragraph 2, it provides, if the prisoner whose surrender is requested has already been convicted of the crime or offense for which his extradition is demanded,

> "The demand therefor shall be accompanied by a copy of the judgment of the Court that pronounced the sentence, bearing the seal of said Court. The signature of the Judge thereof shall be authenticated by the proper executive officer of

the demanding government, whose official character shall, in turn, be attested by the diplomatic agent or superior consular officer of the government on which the demand is made."

As to when a person is simply charged, the only language is:

"Shall be accompanied by an authenticated copy of the warrant of arrest, or of some other equivalent judicial document issued by a judge or a magistrate duly authorized to do so, and likewise by authenticated copies of the depositions or declarations."

In the third paragraph of Section VI, even if the warrant of arrest were necessary, which we claim is not, the same language is used as to the authentication of the depositions. The language in the third paragraph of Article VI is the same for the authentication of the warrant as it is for the authentication of the depositions, and the authentication of the depositions in this case is correct.

The authentication of this document is in the language of the Statute of the Act of 1882. The authentication is:

"I, Charlemagne Tower, Ambassador Extraordinary " Plenipotentiary of the United States of America to " Russia, hereby certify that the annexed papers"— the annexed papers include, not only the protocols, the depositions, but include also this warrant of arrest and this judicial order, therefore the authentication is "that " the annexed papers, intended to be used in an appli-

" cation about to be made by the Government of Rus-
" sia for the extradition from the United States of
" America of Simeon Ivanow Grin, charged with the
" crime of embezzlement, alleged to have been commit-
" ted within the Empire of Russia, as set forth in the
" annexed papers, are properly and legally authenti-
" cated so as to entitle them to be received and
" admitted as evidence for similar purposes by the
" tribunals of Russia, as required by the Act of Con-
" gress of August 3rd, 1882."

That authentication is in the language of the statute of the Act of 1882, and is therefore good.

That was held *in re Herres*, 33 Federal 165.

In *1 Moore on Extradition*, pages 486, 490, 495, 496, 499, Sec. 321, 323, 326, 327, 329, there are a number of certificates of authentication almost identical with the certificate used in this case, all of which certificates were held good by the Courts in the cases that came before them. In fact, there is no difference between the language of this certificate and the statute, except that the statute uses the words "on the hearing", and the certificate uses the words "on the application about to be " made for the extradition"; otherwise the two certificates are exactly alike. That is the language of the statute and the language of this certificate. Therefore, the language of this certificate is good, because it is in the language of the statute. It is good because it is a substantial compliance with the statute. It is good from the precedents cited in half a dozen cases, all

cited in *Moore on Extradition*, and this authentication covers all the annexed papers, the warrant as well as the depositions. In fact it would be carrying it technically beyond everything, even the ingenuity of counsel, and he is learned in that regard, if a certificate drawn here, copied from the language of the Act of 1882, should be held insufficient. It would be impossible to make a certificate. This one is in line with the certificate sent over to England by this government and cited in Moore as a model to follow in such cases.

The last point before we come to the question of larceny is the point made by counsel that we used the word "indict" in our complaint. In reading the translation of some of these orders, we find that they use the word "indicted", and in drawing this complaint originally, having the original translation before us, we used that word. Under the ruling of our *Penal Code* as cited in the 54th California, and under the ruling in *ex parte Sternaman*, so long as this complaint informs the prisoner of the nature of the charge against him, the complaint is good on extradition matters. It would be good in the Police Court in San Francisco. Whether there is an indictment or not, as we use the word in our language, the mere fact that there is an allegation in the complaint that he has been indicted, may be treated as surplusage, so far as it is necessary in a proceeding of this kind.

VI.

Appellant's main point is that there is really charged here the crime of larceny, and not the crime of embezzlement, and as the prisoner cannot be sent over to be tried for larceny when he is charged with the crime of embezzlement, therefore he should be discharged.

Appellant bases his whole argument on the difference between "custody" and "possession".

There used to be a distinction between these words in this connection and some authorities so hold, but that distinction never has obtained in California, nor does it obtain to-day in many of the states. Appellant's point is that the money having been delivered to Grin, merely to take from the State Bank to the Railway Company, he merely had the *custody* and not the *possession* thereof, and, therefore, under the authorities by him cited, that was larceny, and not embezzlement.

The language of our Code, Section 503, is:

> "Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted."

All the Court has to find out in this case is, has property been entrusted to a person named in the Code, and has he converted it to his own use in violation of his trust?

Section 508, Penal Code, says:

> "Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to

his own use, any property of another *which has come into his control or care by virtue of his employment as such clerk, agent or servant is guilty of embezzlement.*"

In 98 American Decisions, page 130, there is a very long note on the subject of embezzlement.

> "It is undoubtedly", says the author, "in the power of the legislature to define the crime of embezzlement, and to make it include offenses which were at common law larceny; and in some states this has been done by statutes, which provide that a clerk, agent, servant, etc., may be guilty of embezzlement of property of another person which shall have come into his possession, '*or under his care*' by virtue of his employment. The phrase 'under his care' "—as in Section 508 of the Penal Code—"will cover property merely in his custody, and therefore, under such a statute, it is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care, and if he converts it he is guilty of embezzlement. And if the statute makes the felonious conversion by a servant of the master's property in the master's constructive possession embezzlement, he must be indicted as such."

The old law, following appellant's authorities, made this absurd ruling,—a coal man, sent with some coal in a cart, sold the coal. The Court held that the cart was in the constructive possession of his master, and therefore the coal was, and he could not be guilty of embezzlement of the coal, because he had only the custody; but if he had stolen the coal when it was not in the cart, he would have been guilty of embezzlement. That was the ancient doctrine. Opposed to this is the

case of *State* vs. *Wingo*, 89 Indiana 204, where a farmer's servant was sent to market with some mules and some wheat in a wagon. He delivered the contents of the wagon, and then he sold the mules. The Court held he was guilty of embezzlement. He could not have been guilty of embezzlement under the doctrine of the coal case, because the mules were in possession of the master, and were simply in his custody.

This distinction between the old doctrine and the modern one is very well pointed out in the case of *New Mexico* vs. *Maxwell*, 2nd New Mexico 250, in which Chief Justice Prince of New Mexico commented on this distinction in the law as now and as it used to be. He said:

> "The first of these is that raised in the seventh point in the appellant's brief, which reads as follows: 'Proofs show that the money was received by defendant from his principal direct, and not from some one else for and on her account—which cannot be embezzlement.'"

That is the point appellant makes here: that this money was received from Zeefo, and therefore was larceny, and not embezzlement. Chief Justice Prince comments upon that, and says:

> "Many cases are cited (and they might have been multiplied indefinitely) in which it has been held, to use the language of Roscoe, that 'the chattel, money or valuable security embezzled by the prisoner must be such as has not come to the possession of his master—if it has come to his possession, the offense is larceny and not embezzlement'.

"The cases go so far even as to apply this principle to money received by one clerk from another in the same employ, because the latter was the agent of the owner."

So in this case, appellant claims this money was received by Grin from Apilora, who was the agent of the owner.

The Chief Justice continues:

"These authorities would be of much weight, and no doubt might control the determination of this Court, if the statutes under which they were promulgated were the same as ours. But in reality the statutes differ in exactly the essential particular required to make those decisions authorities with us.

"In both the English Statutes of 39 Geo. III., c. 85, and 7 and 8 Geo. IV., c. 20, the wording is as follows:

"'If any clerk or servant, etc., shall, by virtue of such employment receive or take into his possession'"—leaving out the words "*or care*"—"'any chattel, money or valuable security for, or in the name or on the account of his master', etc.

"The recent Act of 24 and 25 Victoria, c. 96, in the corresponding section (68), while differing in some other particulars from the older statutes, preserves this same language.

"In Massachusetts"—and he cites a case from Massachusetts—"and in many other states this language was followed, and all the decisions which make it essential that the property, money embezzled should have been received from some person other than the employer, will be found to have been pronounced under such statutes. And under these circumstances they are undoubtedly correct as this language, 'for or in the name or on the

account of', certainly implies that the articles are received for some third party.

"But in the law under which we are acting, these words are not employed. In many ways our statute is broader than those which we have quoted, and this is one of the most important of those respects. The wording here is (Sec. 22, p. 268, Gen. Laws), 'If any officer, etc., shall embezzle, or fraudulently convert to his own use any money or property of another which shall have *come to his possession*, or *shall be under his care* by virtue of his employment' "—

That is exactly the language of our Code (Section 508 Penal Code).

Then the Chief Justice says:

"There is no limitation as to the manner of the coming to his possession, or under his control, or the person from whom they may so come."—That is exactly our statute.—"This widens the scope of the law very much, and renders the decisions made under the more restrictive language of the older statutes entirely inapplicable. This we could hold from the very nature of the language employed, and the difference obviously made by the omission of the old restrictive clause without the need of any previous adjudication on the subject."

There is no distinction under our statute between "custody" and "possession", or "care" and "possession". If property is under an agent's care, like the mules in the Indiana case, if it is in his control or care, the appropriation thereof is embezzlement, because it has been entrusted to him. It does not matter in this case from whom it came, whether from Zeefo direct, or from Zeefo through Apilaro, or from a third

person. The money was entrusted to his care to take from the bank to the railway, and send it to Novorosseesk. Therefore, Grin is guilty of embezzlement, because he appropriated money that was in his care (*10 Am. & Eng. Ency. of Law*, 988, 118 *id.* 473). There has been nothing decided by our California Courts to the contrary.

In the case of the *People* vs. *Belden*, 37 Cal. 51, the Judge used the words "custody" and "possession" as meaning the same thing, and treated the two words as synonymous.

The law of embezzlement in this state is laid down in the case of *ex parte Hadley*, 31 Cal. 109. After going over the English authorities, etc., at page 112 the Court says:

> "It will be seen that there are four distinct propositions of fact to be made out in order to establish the guilt of the petitioner under this section. First, that he was the agent of Wells, Fargo & Co."—Hedley was accused of stealing from his employers. These are four things under the law of this state: "First, that he was the agent of Wells, Fargo & Co. Second, that he received money belonging to them. Third, that he received it in the course of his employment"—and the complaint charged that he was employed as clerk, and received it as clerk —"and fourth, that he converted the money to his own use."

Those are the four qualities of embezzlement in this state.

This prisoner was the clerk of Zeefo, he received money belonging to Zeefo, as the agent of Zeefo. When

the Zeefo check was cashed, as was said in the *Hadley case*—Hadley drew checks on Wells-Fargo, and they were cashed by his broker—the money became the property of Zeefo because it was drawn for Zeefo. Grin received it in the course of his employment, and he converted the money to his own use, with the intent to embezzle. These are the four requirements of embezzlement in this state, as laid down in the *Hadley case*.

But, suppose all of this argument were obliterated, still this case is not within the scope of appellant's authorities, because Grin did not receive the money directly from Zeefo, and the authorities hold—they are all collected in 98 American Decisions, 126—that if the property never got into the possession of the master, then it does not matter whether it was *custody* or *possession*, and the crime is embezzlement. In other words, the rule is, if a servant steals his master's goods before they come into his master's possession, he is guilty of embezzlement, and not larceny.

This rule is also laid down in *10 American & English Encyclopedia of Law*, page 988, which also gives the old rule cited by counsel,

> "Where property is delivered by a third person to a servant for his master, the servant has the possession, so as to be in the position of a mere bailee, until he has delivered the property to the master, or put it, for the master, in the place where it is his duty to put it."

In this case, Grin did not receive the money directly

from Zeefo, but he received it from the State Bank for Zeefo. When he had received it, it was Zeefo's money, as when Hadley cashed the checks, it was Wells, Fargo & Company's money. Then came the trust by Zeefo to deliver it to the railroad to be transported to Novorosseesk, and therefore, it was in Grin's possession until he had delivered it or put it for Zeefo in the place where it was his duty to put it.

> "And a conversion before this is embezzlement, and not larceny. When he has thus disposed of the property, thereafter the constructive possession of the property is in the master, and if the servant afterwards fraudulently converts the same to his own use, he commits larceny, and not embezzlement."

Suppose he had been ordered to bring the money back to Zeefo and had delivered it to him. If he had taken it thereafter he would have merely stolen it.

In 15 Wendell, N. Y. 581, there is a case under the New York statute, which is similar to ours. A guest at an inn gave a letter to the manager to mail, and in that letter was money. The manager handed it to the barkeeper to mail, to simply put it in the post office. The barkeeper opened it and stole the money. It was held it was embezzlement, because it was in his control and under his care.

People vs. *Gallagher*, 100 Cal. 466, is a case very much in point. A check was drawn by a corporation to the order of its secretary, he being authorized to fill in the amount, cash it, and pay certain debts. He filled

it in for a larger amount, cashed it, and appropriated the money. It was held to be embezzlement.

The last point made by counsel is that he did not embezzle the money; that he embezzled the check; that he stole the check. Those are not the facts of this case. The check was entrusted to him to deliver to the State Bank, and he never appropriated the check to his own use. He did with the check what he was told to do. He got the money from the State Bank as he was told to do. If, before he got to the State Bank, he had sold that check and taken the money, then that would have been an embezzlement of the check. But he cashed the check. The check was entrusted to him to get money on, and he obeyed his trust. Then, after he got the money, came the trust to deliver it to the railway, to be sent to Novorosseesk, and that money was then under his care, or in his possession, to carry out that trust, and he violated the trust by converting it to his own use.

Counsel next made the point that larceny is embezzlement when the party takes the property into his custody, with the initial intention of stealing it. The only way in which that fact can be used is when there has been some artifice, some trick, some conduct on the part of the accused to invite the trust, and the cases hold that therefore it is a taking from the possession of the owner, and obliterate the entrusting by the owner, because, they say, he would not have entrusted it if he had known of the fraud practiced on him.

The California Supreme Court has very clearly defined the difference between embezzlement and larceny.

In *People* v. *Tomlinson*, 102 Cal. 23, it said:

> "Where one honestly receives the possession of goods upon a trust, and after receiving them fraudulently converts them to his own use, it is a case of embezzlement. But when the possession has been obtained through a trick or devise, with the intent, at the time the party receives it, to convert the same to his own use, and the owner of the property parts merely with the possession and not with the title, the offense is larceny."

Under this definition Grin's crime is embezzlement and not larceny. He received the property honestly. There was no trick or device on his part in obtaining possession of it. He receives it upon a trust, while acting in a fiduciary capacity, and he fraudulently appropriated it to his own use.

These are all the points made by counsel for appellant in the Circuit Court, and we have but one thing more to add. We have no doubt that the decision of the Circuit Court will be affirmed. But, in the event that this Court should be convinced to the contrary, we submit that under Section 761 of the Revised Statutes, this Court is not compelled to discharge the defendant, but can make whatever order it may desire in consonance with justice in the matter.

In re Gut Lun, 84th Federal Reporter, 323.

In this case a prisoner was brought from Arizona before the District Judge of this district, and a writ of *habeas corpus* was applied for. Apparently, he had to

be discharged from custody, because there had been no new warrant from the Arizona Court. Judge De Haven held the prisoner until a new warrant arrived, although he was compelled to sustain the writ.

There is a case in the 107th Federal Reporter, 440, where a Russian man-of-war was to be manned in Philadelphia. The commander of the ship came over with his crew, and one of them deserted. He was arrested at the instance of the Russian Consul, under the treaty in which each government agreed to in regard to deserters from the respective army or navy of either country. The claim was asserted that that applied to a crew after it was on the ship, and did not apply to men coming to become the crew. The case went to the Circuit Court of Appeals. The District Attorney admitted practically that the case was not within the treaty, and therefore, they had no right to arrest or hold the man under the treaty, but claimed that under Section 761, Revised Statutes, the Court would be justified in holding him, notwithstanding there was no right in the treaty, because he was a member of the Russian navy, and therefore comity between the nations would authorize such action. The Justices agreed that that would be their duty, and that they would do so, but for the fact that there was nothing before them to show he was a member of the Russian navy; that there had been no authorization by our government to allow any portion of the army or navy to touch on American soil. They held that if there had been any recognition by

our government of these men as part of the Russian naval department, it would be a fact before them that he was a deserter, and they would have held him.

So, we say, if the Court please, taking the utmost technical view of this case, this Court is not compelled to discharge this prisoner.

This is a case where the guilt of the prisoner is beyond doubt. There is the deposition of Apilaro that he handed Grin the check, and that he was Zeefo's clerk; that he told him what to do with this money. There is the deposition of the man that paid him the money and identified him by the photograph. There is the signature of Grin showing that he received 25,000 roubles. There is the deposition of the man who saw the money paid. There is the deposition of the agent of the railway that no money was ever transferred to them. There is the deposition of Zeefo that this man was his clerk at that time; and in addition to that, in the record, is the confession made by this man to the secretary of the Consulate, on the day he was arrested, admitting his guilt.

We submit that the judgment of the Circuit Court be affirmed, and respectfully request this Court to read the opinion of Circuit Court Judge, Morrow, reported in 112 Fed. Rep. 780.

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ORIGINAL

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Clerk

No. 303.

No. 303.

Reply Brf. of Platt v Bayne for Appellee.

IN THE

Supreme Court of the United States

Filed Dec. 1, 1902.

OCTOBER TERM, A. D. 1902.

SIMEON A. GRIN,
Appellant,

vs.

J. H. SHINE, United States Marshal, etc.,
Appellee.

Reply Brief of Appellee.

RICHARD BAYNE,
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IN THE

Supreme Court of the United States

of America.

SIMEON A. GRIN, Appellant, vs. J. H. SHINE, United States Marshal, etc., Appellee.	No. 303

REPLY BRIEF OF APPELLEE.

Appellant, in his brief, page 8, states, that the authority vested in E. H. Heacock, United States Commissioner, to hear and determine the extradition proceedings herein, "was not and never has been conferred " by any *court* of the United States, but merely at " tempted to be conferred by the District Judge, acting " not as a court but in chambers as the judge of the " court". This statement is not borne out by the record. On the contrary, the record shows that the Commissioner was especially authorized to act in such matters by an order of the court, entered in the minutes of the court, and not by the order of the District Judge acting in chambers.

Appellant further states that the necessary authority authorizing a Commissioner to act in such matters, should be conferred upon the Commissioner before the filing or presentation of the complaint. There is no such provision in section 5270 or elsewhere. Section 5270 simply provides that a Commissioner cannot issue his warrant of arrest unless he has been specially authorized prior thereto. There is nothing requiring him to be specially authorized prior to the filing of a complaint.

Appellant further contends that if the appointment of the Commissioner is valid, the second warrant to arrest was invalid for the reason that the District Judge and the Commissioner could not possess coequal authority over the case. This does not follow. A Commissioner may be authorized to act in all such matters by a general order of a court of the United States without reference being made to any particular case. That was done in this case. If, after such a general order had been made, appellant's point were true, then it would follow that both the District Court and the Commissioner would be deprived of jurisdiction, because it being exclusive in neither, but coequal in both, they would both be without authority to act. In this case, however, the District Court made a general order authorizing this Commissioner to act in such matters. The second warrant of arrest was then issued and made returnable before the Commissioner, he being authorized to hear the matter. There is nothing preventing a District Judge from authorizing a warrant to be so returned, and such was done.

In re Hinrich, 5 Blatch. 414,

wherein Justice Nelson of the Supreme Court ordered the warrant to be returned before himself or before the Commissioner.

Appellant's point that the complaint charges no embezzlement, has been sufficiently answered in our brief on file and in the opinion of the Circuit Court.

The complaint charges that the defendant received the money from his employers in the capacity of clerk; that he was at the time the clerk of his employers; that while so employed it was entrusted to him in his capacity as said clerk. There is no necessity of saying that he received it by virtue of his employment as clerk, if you state that he received it as clerk, or that it was entrusted to him as clerk, or that he received it in his capacity as clerk. This is all that is required by

Moore vs. *United States*, 160 U. S. 272–274.

The complaint charges that the defendant wrongfully, unlawfully and feloniously appropriated to his own use the property in question and embezzled it. The authorities cited by appellant do not sustain his contention that the omission of the word "fraudulent" makes the complaint fatally defective. *People* vs. *Mitchell*, 92 Cal. 590, cited by appellant, does not decide such a rule. On the contrary it supports our contention, as it holds that an allegation in a complaint charging forgery may simply use the words "make and forge" as the equivalent of the words "falsely make and forge" as the statute requires.

The two citations from *Bishop* on page 14 of appellant's brief, are not applicable to the case at bar. In

the complaint at bar the allegation is, that the defendant "wrongfully, unlawfully and feloniously appropri- " ated and converted to his own use, and embezzled". This is different from the allegations criticised in the two citations from *Bishop*.

Appellant's point as to the validity of the certificate of the United States Minister, has been sufficiently answered in our opening brief. His citation on page 19 *Oteiza* vs. *Cortez*, 136 U. S. 337–338, is not authority upon the point for which it is cited by appellant. This case holds only that depositions on behalf of the defendant are not admissible under the provisions of the Revised Statutes in extradition proceedings.

The use of the words in the certificate "as evidence for " similar purposes", criticised by appellant, finds a precedent in the case of *Cortez* vs. *Jacobus*, cited in *1 Moore on Extradition*, 514.

It is not necessary that the certificate should either specify the papers in detail or else should be separately attached to each paper, as claimed by appellant. An examination of all the precedents as found in *Moore on Extradition* show that the custom has been as followed by the Minister in this case, to attach a general certificate to all of the papers. See upon this point especially the reply of Secretary of State Freylinghuysen to our Embassador Fish, cited in *1 Moore on Extradition*, 481.

Appellant's eleventh point, that there is no evidence of embezzlement, is sufficiently answered in our opening brief, and in the opinion of Judge Morrow. His argument that the evidence shows an embezzlement of bank bills, goes only to the weight of the evidence,

which cannot be considered in habeas corpus proceedings. Most of the authorities cited by him upon this point, are not applicable. *State* vs. *Collins*, 72 N. C. 144, went off on the point that the embezzlement of a bank note was not the embezzlement of a treasury note, or vice versa. *Carr* vs. *State*, 16 So. Rep. 155, decided that the conversion of money was not proven by conversion of a check. *Johnson* vs. *State*, 11 Ohio St. 324, and *Block* vs. *State*, 44 Tex. 620, are based upon the distinction drawn in the statutes of those States between bank bills and money. *Commonwealth* vs. *Swinney*, 1 Va. Cas. 151, is in no sense in point. *McCauley* vs. *State* and *Johnson* vs. *State*, Tennessee cases, are the only decisions that are in accord with appellant's argument. This rule does not obtain in California, and if it did it would only go to the weight of the evidence and not to its competency.

These authorities are, however, not applicable to the evidence in this case. The witness Sporatov, assistant cashier of the bank, testified as follows: "I issued 15,000 roubles in '100 rouble' bank notes, and 10,000 roubles in '500 rouble' bank notes." The witness Follendorf, assistant auditor of the bank, testified that he saw Grin when he received 25,000 roubles. Fillipoff, another witness, says he saw Grin's receipt, which was worded as follows: "Received 25,000 roubles S. I. Grin." Ottens, manager of the bank, says that his bank paid 25,000 roubles to Grin. The complaint alleges the embezzlement of 25,000 roubles in Russian money. This evidence is all competent evidence, and therefore not reviewable in this proceeding, even though it might

not be sufficient in some jurisdictions to sustain a conviction, which, however, we do not concede.

Appellant's authorities cited on page 29, that the evidence is insufficient to show that the defendant appropriated the money, only go to the weight of the evidence. In none of the cases from California cited by appellant did the facts show, as in this case, receipt of the money, failure to apply it as directed, and secret flight from the country with the money.

The authorities from California cited by appellant to support his contention that the confession of defendant is not evidence of embezzlement, do not sustain the contention. They simply hold that a confession alone is not sufficient without some other proof of the commission of crime. This simply goes to the weight of the evidence.

The appellant claims that the mandate is a nullity because it does not designate in terms the kind of embezzlement so as to show it to be within the treaty.

This is not necessary. The mandate mentioned the crime of embezzlement. This crime is one of those mentioned in the treaty. The evidence shows that it is embezzlement by a hired person of property whose value exceeds three hundred roubles. This is all that is necessary, either under the treaty or under the revised statutes.

Respectfully submitted,

Attorneys for Russian Government.

Of Counsel.

Supreme Court of the United States.

No. 303.—October Term, 1902.

Simeon I. Grin, Appellant, vs. John H. Shine. } Appeal from the Circuit Court of the United States for the Northern District of California.

[December 1, 1902.]

This was an appeal from a judgment of the Circuit Court for the Northern District of California, dismissing a writ of *habeas corpus* sued out by Grin, and remanding him to the custody of the defendant, marshal for the Northern District of California, who held him under a mittimus issued by a commissioner in certain proceedings under a treaty with the Emperor of Russia for the extradition of criminals, proclaimed June 5, 1893. (28 Stat. 1071.)

These proceedings were begun by a complaint of Paul Kosakevitch, Russian consul at the city of San Francisco, stating in substance that on March 6, 1901, Grin, a Cossack of the Don and a Russian subject, in the employment of the firm of E. L. Zeefo & Co., doing business in the city of Rostov, on the river Don, in the Empire of Russia, embezzled the sum of 25,000 roubles, "entrusted to and received by" him in his capacity as "clerk" of such firm, and that he had subsequently absconded and taken refuge in San Francisco; that he had been indicted in Russia for the embezzlement of the money, and that a mandate had been issued by the Department of State in Washington directing the necessary proceedings to be had in pursuance of the laws of the United States, in order that the evidence of this criminality might be heard and considered. The complaint was sworn to before George E. Morse, United States commissioner, with the usual power to take affidavits, but not specially authorized by any court of the United States to take proceedings in extradition; that upon such complaint the judge of the District Court for the Northern District of California issued a warrant of arrest, and directed that petitioner, when arrested, should be brought before E. H. Heacock, Esquire, United States commissioner, for examination and further proceedings; that, at the time such warrant was issued, Heacock was not authorized to take jurisdiction of extradition proceedings, and that the evidence before him failed to show that the petitioner had committed the crime of embezzlement.

Several other defects in the extradition proceedings are set forth in the petition, and so far as they are deemed material appear hereafter in the opinion.

Upon a hearing upon this petition the Circuit Court made an order remanding the petitioner to the custody of the marshal, and an appeal was thereupon taken to this court. (*In re Grin*, 112 Fed. Rep. 790.)

Mr. Justice BROWN delivered the opinion of the Court.

We shall only notice such alleged defects in the extradition proceedings as are pressed upon our attention in the briefs of counsel. While these defects are of a technical character, they are certainly entitled to respectful and deliberate consideration. Good faith toward foreign powers, with which we have entered into treaties of extradition, does not require us to surrender persons charged with crime in violation of those well-settled principles of criminal procedure which from time immemorial have characterized Anglo-Saxon jurisprudence. Persons charged with crime in foreign countries, who have taken refuge here, are entitled to the same defenses as others accused of crime within our own jurisdiction.

We are not prepared, however, to yield our assent to the suggestion that treaties of extradition are invasions of the right of political habitation within our territory, or that every intendment in proceedings to carry out these treaties shall be in favor of the party accused. Such treaties are rather exceptions to the general right of political asylum, and an extension of our immigration laws prohibiting the introduction of persons convicted of crimes, (18 Stat. 477,) by providing for their deportation and return to their own country, even before conviction, when their surrender is demanded in the interests of public justice. There is such a general acknowledgment of the necessity of such treaties that of late, and since the facilities for the escape of criminals have so greatly increased, most civilized powers have entered into conventions for the mutual surrender of persons charged with the most serious non-political crimes. These treaties should be faithfully observed, and interpreted with a view to fulfill our just obligations to other powers, without sacrificing the legal or constitutional rights of the accused.

In the construction and carrying out of such treaties the ordinary technicalities of criminal proceedings are applicable only to a limited extent. Foreign powers are not expected to be versed in the niceties of our criminal laws, and proceedings for a surrender are not such as put in issue the life or liberty of the accused. They simply demand of him that he shall do what all good citizens are required, and ought to be willing to do, viz., submit themselves to the laws of their country. Care should doubtless be taken that the treaty be not made a pretext for collecting private debts, wreaking individual malice, or forcing the surrender of political offenders; but where the proceeding is manifestly taken in good faith, a technical non-compliance with some formality of criminal procedure should not be allowed to stand in the way of a faithful discharge of our obliga-

tions. Presumably at least, no injustice is contemplated, and a proceeding which may have the effect of relieving the country from the presence of one who is likely to threaten the peace and good order of the community, is rather to be welcomed than discouraged.

1. The first assignment of error is that the commissioner had no jurisdiction over the case, inasmuch as at the time the warrant of arrest was issued he had not been authorized to act in extradition proceedings by any of the courts of the United States under R. S. sec. 5270, which reads as follows:

"SEC. 5270. Whenever there is a treaty or convention for extradition between the government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, District or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."

Under this section it is plain, first, that the commissioner must be specially authorized to act in extradition cases; second, that a complaint must be made under oath charging the crime; third, that a warrant must issue for the apprehension of the person; fourth, that he must be brought before such justice, judge or commissioner to the end that the evidence of criminality may be heard and considered; fifth, that the commissioner shall certify the evidence to the Secretary of State, that a warrant may issue for the surrender. There is certainly no requirement here that the commissioner shall be authorized to act before he assumes to act, and in this case there is no evidence that he assumed to act until after October 17, 1901, when he was specially appointed for that purpose. The day upon which the petitioner was brought before the commissioner, Heacock, does not appear, but his commitment is dated November 19, 1901. The warrant upon which he was arrested was issued October 17, the day upon which the commissioner was specially authorized to act.

It is true that a warrant of arrest can only issue under sec. 5270 upon a complaint made under oath; but there is no requirement that the oath

shall be taken before a commissioner authorized to act in extradition proceedings, or even before the judge or commissioner, who issues the warrant of arrest. While we are bound to give the person accused the benefit of every statutory provision, we are not bound to import words into the statute which are not found there, or to say that the judge issuing the warrant may not receive an oath taken before a commissioner authorized generally to take affidavits. There is no evidence that Mr. Morse, who took this complaint, was not a United States commissioner appointed under the act of May 28, 1896, (29 Stat. 184,) and the fact that he signs his name as such, and that he was recognized as such by the Circuit Court in this proceeding, is sufficient evidence of his authority. It is true the district judge, who issued this warrant of arrest, might himself have administered the oath, but he was equally at liberty to act upon a complaint sworn to before a United States commissioner.

2. Nor did the district judge, who issued the warant, exceed his powers in making it returnable before a commissioner, who upon the same day was specially designated to act in extradition proceedings. It is true that the statute provides (sec. 5270) that the person before whom the complaint is made may "issue his warrant for the apprehension of the person so charged, that he may be brought before *such* justice, judge or commissioner to the end that the evidence of criminality may be heard and considered;" but the practice in this as in other proceedings of a criminal or *quasi* criminal nature has been to make the warrant returnable before the magistrate issuing the warrant, or some other magistrate competent to take jurisdiction of the proceedings. In the *case of Henrich*, (5 Blatchf. 414,) the complaint was made before Commissioner White, was laid before Mr. Justice Nelson of this court, who issued his warrant returnable before himself *or* Commissioner White. No objection was made to the proceedings for this reason, though the case was vigorously contested upon other grounds, notably because the warrant was executed without the limits of the district, and within the State of Wisconsin. The fact that the point was not made in the case certainly indicates that it was not considered by counsel to be even a plausible ground for quashing the proceedings.

The commissioner is in fact an adjunct of the court, possessing independent, though subordinate, judicial powers of his own. If the district judge, acting under sec. 5270, had made the warrant returnable before himself, there could be no doubt of its legality; and in such case, upon the return of the warrant with the prisoner in custody, he might refer the case to the commissioner to examine the witnesses, hear the case, and report his conclusions to the court for its approval. If he could do that, we see no objection to his referring the case directly to the commissioner by making the warrant returnable before him, inasmuch as the latter possesses the same power with respect to the extradition of criminals as the district judge

himself. It may be said that technically the warrant should be made returnable before the magistrate issuing it, but where it is made returnable before another officer, having the same power and jurisdiction to act, we do not think it is fairly open to criticism.

This practice is by no means unknown under the criminal laws of the several States. Thus in *Commonwealth* v. *O'Connell*, (8 Gray, 464,) it was held that a mere grant of "exclusive jurisdiction" to a police court over certain offenses, did not exclude the authority of justices of the peace to receive complaints and issue warrants returnable before that court. To the same effect are *Commonwealth* v. *Pindar*, (11 Metc. 539;) *Commonwealth* v. *Roark*, (8 Cush. 210;) *Commonwealth* v. *Wolcott*, (110 Mass. 67;) *Hendee* v. *Taylor*, (59 Conn. 448.)

No objection seems to have been taken to the proceedings before the commissioner upon the ground that he did not issue the warrant, and as he was fully vested with authority to act in extradition cases we do not think the fact that the judge, for the convenient dispatch of business, made his warrant returnable before such commissioner can be made available upon a writ of *habeas corpus*.

3. The eighth assignment of error turns upon the sufficiency of the charge of embezzlement. The first article of the extradition treaty with Russia of June 5, 1893, (28 Stat. 1071,) after providing for the mutual surrender of fugitive criminals from one country to another, declares that "this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime or offense had been there committed." We do not deem it necessary to inquire whether the words "evidence of criminality" include a definition of the crime charged or to determine by what law the elements of the crime of embezzlement are fixed. (Moore on Extradition, sec. 344.) As the petitioner has sought to apply the definition of embezzlement given in the law of California as likely to be most favorable to himself, and the prosecution has assented to this view, we assume for the purposes of this case that this is the definition contemplated by the treaty.

Section 508 of the Penal Code of California is as follows:

"Every clerk, agent or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own, any property of another which has come into his control or care by virtue of his employment as such clerk, agent or servant, is guilty of embezzlement."

Objection is made to the complaint upon the ground that there is no allegation that the money embezzled came into his control or care "by virtue of his employment" as such clerk, the allegation being that Grin was employed as clerk; that while so employed the money was entrusted

to and received by him "in his capacity as clerk," as aforesaid. Whatever might be the force of an objection to an indictment that it does not set out in the exact language of the statute the fact that the money came into his possession by virtue of his employment, we think that the complaint in this particular is clearly sufficient. It is a general principle of criminal law that the complaint need not set forth the crime with the particularity of an indictment, and that it is sufficient, if it fairly apprises the party of the crime of which he is charged. If there be any distinction at all between an allegation that money came into the possession of a person by virtue of his employment as clerk, and in his capacity as clerk, it is too shadowy to be made a matter of exception to the complaint.

4. Equally unfounded is it that the complaint is defective because it does not use the word "fraudulently," the allegation being "that the accused wrongfully, unlawfully and feloniously appropriated said money." As the word "embezzled" itself implies fraudulent conduct on the part of the person receiving the money, the addition of the word "fraudulent" would not enlarge or restrict its signification. Indeed, it is impossible for a person to embezzle the money of another without committing a fraud upon him. The definition of the word "embezzlement" is given by Bouvier as "the fraudulent appropriation to one's own use of the money or goods entrusted to one's care by another." In *City* v. *Randall*, (54 Cal. 408,) a complaint that defendant did "wilfully, unlawfully and feloniously embezzle and convert" certain securities to his own use, was held to be a sufficient compliance with sec. 1426 of the penal code, requiring the offense charged to be set forth "with such particulars of time, place, person and property as to enable the defendant to understand the character of the offense complained of, and to answer the complaint." The complaint in this case differs from that only in the substitution of the word "wrongfully" for the word "wilfully," and we think it is clearly sufficient. As the word "embezzle" implies a fraudulent intent, the addition of the word "fraudulently" is mere surplusage. (*Reeves* v. *State*, 95 Ala. 31; *United States* v. *Lancaster*, 2 McLean, 431; *State* v. *Wolff*, 34 La. Ann. 1153; *State* v. *Trolson*, 21 Nev. 419; *State* v. *Combs*, 47 Kan. 136.) We express no opinion as to whether it would be necessary in an indictment.

5. It is further insisted that the treaty requires an authenticated copy of the warrant of arrest or of some other equivalent judicial document, issued by a judge or magistrate of the foreign government duly authorized so to do, and that there is no such process in the record as a warrant of arrest or its equivalent. It is true that art. VI of the treaty provides that "when the person whose surrender is asked shall be merely charged with the commission of an extraditable crime or offense, the application for extradition shall be accompanied by an authenticated copy of the

warrant of arrest or of some other equivalent judicial document, issued by a judge or a magistrate duly authorized to do so." But it can hardly be expected of us that we should become conversant with the criminal laws of Russia, or with the forms of warrants of arrest used for the apprehension of criminals. The clause is satisfied by the production of an equivalent document. On examination of the record we find a certified copy of an order by one purporting to act as an examining magistrate, and reciting that "having investigated the preliminary examination concerning the accusation of the Cossack, Simeon Grin," and that "as he is hiding under a false name, and, as is seen from his letters, is looking out for means to prevent his arrest and the finding out of his address by the authorities, his temporal place of residence being known at present," pursuant to art. 389 of the Criminal Code of Procedure, "he is ordered to be brought to the city of Rostov on the Don, in order to be placed at the disposition of the examining magistrate of the Taganrog Circuit Court." This order purports not only to be signed, but sealed by the examining magistrate Okladnykh, and while it is not in the form of a warrant of arrest as used in this country, it is evidently designed to secure the apprehension of the accused, and his production before an examining magistrate. This seems to us a sufficient compliance with the treaty. If not a warrant of arrest it is an equivalent judicial document, issued by a judge or magistrate authorized to do so.

But there is another consideration in this connection which should not be overlooked. While the treaty contemplates the production of a copy of a warrant of arrest or other equivalent document, issued by a magistrate of the Russian Empire, it is within the power of Congress to dispense with this requirement, and we think it has done so by R. S. sec. 5270, hereinbefore cited. The treaty is undoubtedly obligatory upon both powers, and, if Congress should prescribe additional formalities than those required by the treaty, it might become the subject of complaint by the Russian government and of further negotiations. But notwithstanding such treaty, Congress has a perfect right to provide for the extradition of criminals in its own way, with or without a treaty to that effect, and to declare that foreign criminals shall be surrendered upon such proofs of criminality as it may judge sufficient. (*Castro* v. *Uriarte*, 16 Fed. Rep. 93.) This appears to have been the object of sec. 5270, which is applicable to all foreign governments with which we have treaties of extradition. The requirements of that section, as already observed, are simply a complaint under oath, a warrant of arrest, evidence of criminality sufficient to sustain the charge under the provisions of the proper treaty or convention, a certificate by the magistrate of such evidence and his conclusions thereon, to the Secretary of State. As no mention is here made of a warrant of arrest, or other equivalent document, issued by a foreign magistrate, we do not see

the necessity of its production. This is one of the requirements of the treaty which Congress has intentionally waived. (Moore on Extradition, sec. 70.)

6. Again, it is alleged that although the complaint sets forth that criminal proceedings have been instituted in Russia, and that Grin had been therein "indicted" for embezzlement, no indictment has ever been found, and that no other evidence of criminality can be received. It is obvious that the word "indictment," as it appears in this complaint, was used in the general sense of charged or accused by legal proceedings, and not in the technical sense of an indictment as here understood. An indictment is a technical word peculiar to Anglo-Saxon jurisprudence, and implies the finding of a grand jury. To give it the construction contended for would require us to know what an indictment was under the laws of Russia and to inspect it, at least so far as to ascertain the charge for which the conviction of the accused is sought. No indictment was necessary to be produced under this complaint, the proceeding being governed by section 5 of the act of August 3, 1882, (22 Stat. 216):

"That in all cases where any depositions, warrants or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statutes of the United States, (secs. 5270 and 5271,) such depositions, warrants and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing, if they shall be properly and legally authenticated so far as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States, resident in such foreign country, shall be proof that any deposition, warrant or other paper, or copies thereof, so offered, are authenticated in the manner required by this act."

The sufficiency of such evidence to establish the criminality of the accused for the purposes of extradition cannot be reviewed upon *habeas corpus*. (*In re Luis Oteiza*, 136 U. S. 330.)

7. It is further insisted that the depositions and other documents which appear in the record have not been properly and legally authenticated. The certificate of the ambassador in that connection is that these papers "are properly and legally authenticated so as to entitle them to be received and admitted as evidence for similar purposes by the tribunals of Russia." As this is a literal conformation to the above statute, adding only the words, "as evidence," it is difficult to see in what respect it is deficient. If we were to hold that a certificate in the language of the statute were insufficient, the certifying officer would be at once embarked upon a sea of speculation as to the proper form of such certificate, and would be utterly without a guide in endeavoring to ascertain what the requirements of the law were in that particular. All that was decided in the case of *Luis Oteiza*

(136 U. S. 330,) in this connection was that depositions and other papers authenticated and certified as required by the act, were not admissible on the part of the accused. The introduction of the words "as evidence" does not vitiate the certificate. We find it difficult to conceive any other purpose for which such depositions could be used except as evidence of criminality.

8. No evidence was required that the Russian consul had authority to make the complaint. All that is required by sec. 5270 is that a complaint shall be made under oath. It may be made by any person acting under the authority of the foreign government having knowledge of the facts, or, in the absence of such person, by the official representative of the foreign government based upon depositions in his possession, although under the first article of the treaty the accused can only be *surrendered* upon a "requisition" of the foreign government, and by art. VI such requisition must be made by the "diplomatic agent of the demanding government," and in case of his absence from the seat of government, by the "superior consular officer." It is true that art. VII of the treaty provides that it "shall be lawful for any competent judicial authority of the United States, upon production of a certificate issued by the Secretary of State, stating that request has been made by the Imperial Government of Russia for the provisional arrest of a person convicted or accused of the commission therein of a crime or offense extraditable under this convention, and upon complaint, duly made, that such crime or offense has been so committed, to issue his warrant for the apprehension of such person;" and in this case it appears by the certificate of the Acting Secretary of State that application was made in due form by the chargé d'affaires of Russia accredited to this government, for the arrest of Grin, alleged to be a fugitive from the justice of Russia. This, however, was entirely independent of the proceedings before the magistrate, which might have been instituted by any person making a complaint under oath and acting by the permission or authority of the Russian government. While art. VII undoubtedly contemplates a prior certificate of the Secretary of State, the language of the article is merely permissive, and does not compel the production of such certificate before the warrant can be issued.

It might readily happen that the foreign representative might have no knowledge of the facts necessary to be embodied in a complaint, and have no documentary evidence then at hand to prove them. In such case if a complaint could not be made by a private person, having knowledge of the facts, the surrender might easily be defeated by the flight of the accused.

It was formerly held that a requisition from the demanding government was necessary to be produced before the commissioner could act, (*In re Herres*, 32 Fed. Rep. 583,) but the opinion in this case was reversed by

Mr. Justice Brewer on appeal to the Circuit Court, who held that no preliminary requisition was necessary, as extradition could not be consummated without action by the executive in the last instance, and that the authority of the foreign government to act need not appear in the complaint, if it were made to appear in the examination before the commissioner, or elsewhere in the proceedings. Bearing in mind the frequent necessity for immediate action in case the whereabouts of the accused is ascertained, the delay necessary to procure a preliminary requisition might often result in the defeat of justice.

In *Kaine's case*, (14 How. 129,) this court was nearly equally divided upon the question whether a preliminary mandate from the executive was necessary. So long as Mr. Justice Nelson, who thought such mandate necessary, remained upon the bench his opinion was followed in the Second Circuit, (*In re Henrich*, 5 Blatch. 414; *In re Farez*, 7 Ibid. 34, 345;) but since that time a different view has been taken of the question. (*In re Macdonnell*, 11 Blatch. 79; *In re Thomas*, 12 Ibid. 370.) Judge Lowell's opinion accorded with the later, and, as we think, the sounder view, (*In re Kelley*, 2 Low. 339). See also *Benson* v. *McMahon*, (127 U. S. 457.)

9. It is again objected that the facts set forth in the record show that defendant, if guilty at all, is guilty of larceny and not of embezzlement, and that as the laws of California make a clear distinction between embezzlement and larceny, he cannot be held for one crime upon proof of his guilt of the other. The charge set forth in the complaint is that Zeefo, one of the members of the firm of E. L. Zeefo & Co., entrusted and delivered a a cheque for the money to Grin, who subsequently received the money from the bank to take it to the Vladikavkaz Railway Company, by which it was to be taken to Novorosseesk, and upon the same day absconded. Upon these facts it is insisted that the defendant had nothing more than the bare custody, as disinguished from the possession of the money, and therefore could not and did not embezzle it, but stole it.

By section 503 of the Code of California "embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted," and by section 508, "every clerk, agent, or servant of any person who fraudulently appropriates to his own use . . . any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement." As Grin was clerk of the firm, and as the money was delivered to him in his capacity as clerk for a special purpose, it certainly came into his control or care. We do not care to inquire into the soundness of the distinction made in some of the older cases between the custody and possession of property, because under the section above quoted nothing more is necessary to constitute embezzlement than that the party charged should have the control or care of the money.

The cases in California upon this subject are decisive. Thus, in *Ex parte Hedley*, (31 Cal. 108,) where the agent of an express company, authorized to draw telegraphic cheques on his principal for money to be used in the principal's business, but not to draw individual cheques, drew certain cheques as agent for money to be used in his private business, and the principal paid the money to the drawee, it was held to amount to a receipt of the money of the principal by the agent "in the course of his employment." It was further held that, in order to convict one of embezzling money of his principal, it was necessary to establish four propositions: First, that the accused was an agent; second, that he received money belonging to his principal; third, that he received it in the course of his employment; fourth, that he converted it to his own use with intent to steal the same. In *People* v. *Tomlinson*, (102 Cal. 19,) a recent case upon the same subject, the law of California was summed up as follows: "Where one honestly receives the possession of goods upon a trust, and after receiving them fraudulently converts them to his own use, it is a case of embezzlement, . . . but where the possession has been obtained through a trick or device, with the intent, at the time the party receives it, to convert the same to his own use, and the owner of the property parts merely with the possession and not with the title, the offense is larceny."

These cases are strictly in line with that of *Moore* v. *United States*, (160 U. S. 268,) in which we held that "embezzlement is the fraudulent appropriation of property by a person to whom such property has been entrusted, or into whose hands it has lawfully come. It differs from larceny in the fact that the original taking of the property was lawful, or with the consent of the owner, while in larceny the felonious intent must have existed at the time of taking."

The cases relied upon by the petitioner are of the latter description. Thus in *People* v. *Abbott*, (53 Cal. 284,) defendant was instructed by a bank to purchase silver for its account; and, to provide him with funds, the bank certified and delivered him a cheque drawn by him on the bank. He did not purchase the silver, but used the cheque for his own purposes. It was held that, if he took the custody of the certified cheque with the intention of stealing it, he was guilty of larceny. The question was treated as one for the jury. In *People* v. *Reschke*, (73 Cal. 378,) it was held that if one, through false representations, obtains the possession of personal property with the consent of the owner, but without a change of the general title, he is guilty of larceny, upon subsequently converting the same to his own use, if he had the felonious intent to steal the property at the time the possession was obtained. The authority of these cases is not questioned. In the case under consideration, a cheque was delivered to the petitioner with instructions to draw the money from the bank, take it to the railway station, to be forwarded to another city. The facts show

that he obtained possession of both the cheque and the money, honestly, and with the consent of his principal, and subsequently converted it to his own use. *Prima facie*, at least, this makes a case of embezzlement, and if there were in fact an original intent to steal, that is a question for a jury in a Russian court to pass upon. It is sufficient for the purposes of this proceeding that a *prima facie* case of embezzlement is made out.

This disposes of all the questions made in the brief, and the judgment of the Circuit Court is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.